1215.

SUPREME COURT OF THE UNITED STATES.

No. 157.

THE BOARD OF TRUSTEES FOR THE VINCENNES UNIVERSITY, PLAINTIFFS IN ERROR,

vs.

THE STATE OF INDIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

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Gideon, print.

Pleas before the honorable Isaac Blackford, Samuel E. Perkins, and Thomas L. Smith, judges of the supreme court of the State of Indiana, held at the State house, in the city of Indianapolis, on the twenty-seventh day of November, in the year of our Lord one thousand eight hundred and fifty.

THE STATE OF INDIANA
vs.
THE TRUSTEES of the Vincennes University.

In error to the Marion circuit court.

Be it remembered, that heretofore, to wit, on the fifth day of June, in the year of Lord one thousand eight hundred and forty-nine, comes the plaintiff, by her counsel, and files in the clerk's office of the supreme court of said State a transcript of the record of the above entitled cause, with an assignment of errors endorsed thereon, which are in the words and figures following, to wit: Be it known, that among the records of the proceedings and judgments of the Marion circuit [court,] in the State of Indiana, at the April term thereof, in the year of our Lord one thousand eight hundred and forty-nine, is the following, to wit: Pleas before the honorable William J. Peaslee, president judge of the fifth judicial circuit, in the State of Indiana, and Adam Wright and Daniel R. Smith, esquires, associate judges within and for the county of Marion and State aforesaid, of the term of April, in the year of our Lord one thousand eight hundred and forty-nine.

THE TRUSTEES OF THE VINCENNES UNIVERSITY,
vs.
The State of Indiana.

In chancery.

Be it remembered, that on the fourth day of May, in the year of our Lord one thousand eight hundred and forty-six, the above named complainants, by Messrs. Judah and Ellis, their solicitors, filed in the office of the clerk of the Marion circuit court aforesaid their bill of complaint in the above entitled cause, in the words and figures following, to wit:

To the honorable the circuit court of Marion county, in chancery.

Your orators, the Board of Trustees of the Vincennes University, respectfully state, that in the act of Congress of March 26, 1804, for the disposal of the public land in the Indiana territory, the second section establishes three land districts, one at Vincennes. The fifth section directs the sale of all the lands, except the private reserves, sections No. 16, and the salt lands, and with "the exception also of an entire township in each of the three districts, to be located by the Secretary of the Treasury for the use of a seminary of learning."

That the Secretary of the Treasury, Albert Gallatin, by his letter of October the 10th, 1806, to the register of the land office at Vincennes, a copy of which, duly certified by said register, is exhibited herewith, and made a part hereof, did locate the township number two south, range eleven west, in said Vincennes district, now in Gibson county, and commonly called the Gibson seminary township, for the use of a seminary of learning in the Vincennes district.

That the Vincennes land district, by the said act of 1804, consisted of the land included in the "boundaries fixed by the treaty lately held with the Indians of the Wabash." And that your orators understand the act to refer to the treaty made by Governor Harrison, at Fort Wayne, 7th June, 1803; and that a portion of the land, so included, is now in the State of Illinois; and that the county of Monroe and the town of Bloomington therein, is within the boundaries fixed by the said treaty.

Your orators further state, that in the ordinance of Congress of 1787, for the government of the Northwestern territory, certain articles of compact are established; and that by the third article it is provided as follows: "Religion, morality, and knowledge being necessary for good government and the happiness of mankind, schools, and the means of education, shall forever be encouraged." And that by this same ordinance a legislative power is *estimated* as follows: "And the governor, legislative council, and house of representatives, shall have authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared." And also, that, by act of Congress of May 7, 1800, the Indiana territory was organized, with powers given by the ordinance of 1787, precisely.

Your orators further state, that by an act of the legislature of the Indiana territory, passed at the first session thereof, entitled "An act to incorporate a university in the Indiana territory," approved November 29, 1806; and by another act of the said legislature, passed at the same session thereof, supplemental to the first mentioned act, which acts were re-enacted in the revised code of 1807, and as such, from the act of the first session of the second general assembly of the Indiana territory, entitled "An act to incorporate a university in the Indiana territory," approved September 17th, 1807, the Vincennes University was established, and your orators were incorporated by the name of "The Board of Trustees for the Vincennes University," and were ordained, constituted, and declared to be, forever thereafter, a body politic and corporate, in fact and in name, with continual succession.

And that by virtue of the said first mentioned act the said corporation was duly organized at Vincennes on Saturday, the sixth day of December, 1806, and have been thenceforth continued by regular succession.

And that the second section of the said act is as follows: And whereas Congress has appropriated a township of land of 23,040 acres for the use and support of the University, or a public school in the district

of Vincennes. And whereas the township is now located, and the boundaries designated; be it therefore enacted, that the trustees, in their corporate capacity, or a majority of them, be, and they are hereafter, authorized to sell, transfer, convey, and dispose of any quantity, not exceeding four thousand acres, of the said land for the purpose of putting into immediate operation the said institution or university, and to lease or rent the remaining part of the said township to the best advantage for the use of the said public school or university."

And that by the said acts the said corporation had and have power to sue and to be sued, and to purchase, hold, lease, and convey real estate for the use of the corporation, to an amount not exceeding, at any one time, one hundred thousand acres of land.

And your orators further state, that by virtue of the said several laws, and of said acts of incorporation, your orators, in the year 1807, became and were possessed of the said township of land, for the uses and purposes in the acts of incorporation provided, and so continued thereof possessed during the existence of the territorial government of Indiana, and so was possessed when the State government of Indiana was organized; and that all the rights, powers, privileges, and property of the said corporation, under the laws of the Indiana territory, *and* secured by the constitution of Indiana.

Article XII, sec. 1, which provides as follows: "That no evils or inconveniences may arise from the change of a territorial government to a permanent State government, it is declared by this constitution, that all rights, suits, actions, prosecutions, recognisances, contracts, and claims, both as it respects individuals and bodies corporate, shall continue as if no change had taken place in this government."

And your orators further state, that between the year 1806 and the year 1820, your orators sold the said 4,000 acres of land, and leased portions of the remainder of the said township, and erected a college building at Vincennes, and both before and after 1820, and at all times, were willing to lease lands in said township as opportunities offered, and at no time and in no manner relinquished or abandoned their rights to the said township. And that until the said year 1820 there was no interference with their corporate rights; and especially none such with their right to the rents and profits of the lands in the said township not by them sold as aforesaid; and more particularly no claim whatever of any kind by, or on the part of, the State of Indiana.

But, so it is, may it please your honors, that on the 22d day of January, 1820, a joint resolution of the general assembly of the State of Indiana was approved, whereby one Jesse Emmerson was appointed a superintendent for the seminary township in Gibson county, with power to rent the improved lands in said township for term of two years, and to collect all arrears of rent, and to account to the State, as will more fully and at large appear by reference to the said joint resolution.

And that this was followed by another legislative violation of your orator's rights, in manner following, to wit, by act entitled "An act to provide for the sale of the seminary township in Gibson county, and

for other purposes," approved 2d January, 1822. And by another act, approved January 25, 1837, commissioners were appointed on behalf of the State of Indiana to sell the said township, as in said act is provided, as by reference thereto will appear. And that in said act there is a section seven, and that said section seven has a preamble thereto, as follows: "Whereas, it is stated to this general assembly that the former board of trustees of the Vincennes University sold certain quarter sections of the seminary township, without making and executing deeds therefor; and that the said board have expired by the negligence of its members," for remedy, &c. And your orators do aver that the statement in said preamble, that "the said board have expired by the negligence of its members," is false in fact throughout; that at that very time there was a regular and full board of trustees, of which the hon. Isaac Blackford was a member, and the secretary; and that some, at least, of the members of the legislature did know it, and all might have known it if they had inquired.

And your orators further state, that by virtue of the said acts the said commissioners, in and of the year 1827, sold the lands in the said township, to the amount of 20,000 acres, and of the value of 50,000 dollars; and that the proceeds of said rents, the sum of $33,000; a part of the purchase money of said land, and the sum of $12,000 for interest which had accrued thereon, and on money unpaid and yet due on said sales, has been paid into the treasury of the State of Indiana; and that the further sum of three thousand dollars has been paid for fees and expenses about said sales, contrary to the will and against the rights of your orators; and that the further sum of $15,000 is yet due to the State on said sales.

All which was done contrary to the chartered rights of your orators, secured to them by the laws of the land, and in a special manner by the constitution of the State; and under the only pretence, first made in the year 1820, that by virtue of the fourth article of the sixth section of the act of Congress to enable the people of Indiana territory to form a State government, approved 19th April, 1816, which provides that "one entire township, which shall be designated by the President of the United States, in addition to the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said State, to be appropriated solely to the use of such seminary by the said legislature;" the said township of lands reserved by the act of 1804, and appropriated by the said acts of incorporation, and thereby vested in your orators, and their right thereto sanctioned by the constitution, was vested in the legislature of the State. All which pretence your orators aver to be unfounded.

Your orators further state, that by an act of the general assembly of the State of Indiana, entitled "An act to authorize the Trustees of the Vincennes University to bring suit against the State of Indiana, and for other purposes," approved January 17, 1846, your orators are authorized to file a bill in chancery, in the nature of an action of disseisin, in the Marion circuit court, against the State of Indiana, for

the purpose of trying the right of the said board of trustees to said township of lands, and full jurisdiction thereof is given to said court.

Wherefore your orators pray that the State of Indiana be taken as defendant to this their bill of complaint; that the ordinary process in chancery be issued and served on the governor of the State of Indiana; that the governor, by counsel, plead or answer to said bill without oath, so as to present the claim of your orators to your honors on its merits alone; that an account be taken of the sums of money paid into the State treasury, being the proceeds of said lands, and of the money yet due on said sales; that the right of your orators to the said township of land be established and declared.

That the proceeds of said sales paid into said treasury, and the interest thereon be paid to your orators, and that the money due to the said State on account of said sales be assigned to your orators; and that your orators may have full relief according to the legal and equitable rights, and in pursuance of the intent of the statute.

Your orators will ever pray, &c.

SAM'L JUDAH,
A. T. ELLIS,
Complainants' solicitors.

The copy of the letter from Albert Gallatin to the register of the land office at Vincennes, referred to in the foregoing bill of complaint, made an exhibit and part of said bill, and filed therewith, is in the words and figures following, to wit:

REGISTER'S OFFICE, *Vincennes, May* 30, 1846.

This is to certify, that the following is a true copy of an original letter on file in my office, to wit:

TREASURY DEPARTMENT, *October* 10, 1806.

SIR: In conformity with the provisions of the fifth section of the act making provision for the disposal of the public lands in the Indiana territory, and for other purposes, I do hereby locate, for the use of a seminary of learning, township No. two south, of the base line in the eleventh range west, of the Vincennes district, being the same which is recommended for that purpose in your and the receiver's joint letter of the 12th ultimo. You will please enter the location accordingly in your book of entries, in order that the same may be matter of record.

I have the honor to be, respectfully,
Your obedient servant,
ALBERT GALLATIN.

JOHN BADOLLET, esq.,
Register of the land office, Vincennes.

In testimony whereof I have hereto set my hand the day and year aforesaid.

JOHN MYERS, *Register.*

And afterwards, to wit, at the term of said Marion circuit court, begun and held at the court-house in the town of Indianapolis, county of Marion, and State of Indiana, aforesaid, on Monday, the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and forty-six, before the honorable the judges above named, and continued before the same judges until Tuesday, the 27th day of said month, and second judicial day of said term, "come the complainants, by their solicitors; and the defendant also comes, by Oliver H. Smith, solicitor; and time is given, &c.

And afterwards, to wit, on Wednesday, the eighteenth day of November, in the year last aforesaid, and twenty-first judicial day of said term, come the parties by their counsel, and upon their agreement the defendant is ruled to answer the bill herein in ninety days from this date, and this cause is continued until next term.

And afterwards, to wit, "on the 6th day of February, in the year of our Lord one thousand eight hundred and forty-seven, the above defendant, by O. H. Smith, esquire, her counsel, filed in the office of the clerk of the said Marion circuit court, her answer to the bill of complaint of the said complainants, above filed herein, in the words and figures following, to wit:

THE STATE OF INDIANA,
Marion county, ss:

In the Marion circuit court.

THE STATE OF INDIANA ats. THE TRUSTEES OF THE VINCENNES UNIVERSITY.	Chancery.

And the said defendant by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' bill of complaint mentioned and contained, to be true in such sort, manner, and form as the same are therein set forth and alleged, for plea to the whole of said bill saith, that the said supposed causes and grounds of equity, relief, and discovery, did not, nor did any or either of them, accrue to the said complainants, at any time within twenty years next before the commencement of their suit; nor did the said supposed causes or grounds of equity, or either of them, accrue to the said complainants against the said vendees, lessees, occupants, or holders of said lands, or any or either of them, at any time within twenty years next before the commencement of this suit; therefore the said defendant doth plead the said matters of limitation in bar to the complainant's bill, and prays the judgment of this honorable court whether he shall be compelled to make any further answer to said bill, and prays to be hence dismissed, with her costs in this behalf most wrongfully sustained.

O. H. SMITH,
Solicitor for the State of Indiana.

And the said defendant, by her counsel, comes, and by protestation, not confessing or acknowledging any or all of the matters and things in said bill of complaint stated to be true, as stated therein, for plea to so much of said bill as seeks to charge the said defendant with the value of the said lands specified in the bill, or the proceeds of the sale thereof, saith, that the said supposed causes and grounds of equity did not accrue, or either of them, to the said complainants at any time within six years next before the commencement of this suit; nor did such causes of equity, or either of them, accrue to the said complainants against the said vendees or lessees of this defendant at any [time] within six years next before the commencement of this suit; therefore the said defendant doth plead the same in bar to the said complainans' bill, so far as before herein stated, and prays the judgment of the court whether she shall be compelled to make any further answer to so much of said bill, and hence prays to be dismissed with her costs wrongfully sustained.

O. H. SMITH,
Sol. for defendant.

And the said defendant, by protestation, not confessing or acknowledging all or any of the matters in the bill of complaint to be true, for plea to the same says, that the said complainants ought not to have or maintain the said suit against this respondent; because she says, that this respondent and the said purchasers and lessees of said lands, for more than twenty years next before the commencement of this suit, have been in the quiet and peaceable possession of the said lands (for which the complainants seek a decree) under an adverse title in right of this respondent; and therefore the said defendant doth plead the same in bar to this suit, and prays the judgment of the court, whether she shall be compelled to make any further answer to said bill so far as the lands and the proceeds thereof are concerned, for which the complainants seek a decree, and hence prays to be dismissed with her costs.

O. H. SMITH,
Sol. for respondent.

And the said defendant, for answer to said bill of complaint, or to so much thereof as she deems it necessary to make answer unto, reserving all manner of exceptions to the said bill, she answers and says, that she relies, as a distinct and sufficient bar to said suit, upon the statutes of limitation of the State of Indiana, and the act of the legislature of the State of Indiana, and the explanatory act thereto, authorizing this suit; and which several acts of the general assembly of the State of Indiana she makes a part of this answer. This respondent, stating and averring that said complainants ought not to have or maintain the said suit, because she says that this respondent, her vendees and lessees of said lands, for which said complainants seek a decree, have, for more than twenty years next before the commencement of this suit, been in the quiet and peaceable possession of said lands under an adverse title in right of this respondent, derived directly by grant from the United States; and

And afterwards, to wit, at the term of said Marion circuit court, begun and held at the court-house in the town of Indianapolis, county of Marion, and State of Indiana, aforesaid, on Monday, the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and forty-six, before the honorable the judges above named, and continued before the same judges until Tuesday, the 27th day of said month, and second judicial day of said term, "come the complainants, by their solicitors; and the defendant also comes, by Oliver H. Smith, solicitor; and time is given, &c.

And afterwards, to wit, on Wednesday, the eighteenth day of November, in the year last aforesaid, and twenty-first judicial day of said term, come the parties by their counsel, and upon their agreement the defendant is ruled to answer the bill herein in ninety days from this date, and this cause is continued until next term.

And afterwards, to wit, "on the 6th day of February, in the year of our Lord one thousand eight hundred and forty-seven, the above defendant, by O. H. Smith, esquire, her counsel, filed in the office of the clerk of the said Marion circuit court, her answer to the bill of complaint of the said complainants, above filed herein, in the words and figures following, to wit:

THE STATE OF INDIANA,
Marion county, ss:

In the Marion circuit court.

THE STATE OF INDIANA
ats.
THE TRUSTEES OF THE VINCENNES UNIVERSITY. } Chancery.

And the said defendant by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' bill of complaint mentioned and contained, to be true in such sort, manner, and form as the same are therein set forth and alleged, for plea to the whole of said bill saith, that the said supposed causes and grounds of equity, relief, and discovery, did not, nor did any or either of them, accrue to the said complainants, at any time within twenty years next before the commencement of their suit; nor did the said supposed causes or grounds of equity, or either of them, accrue to the said complainants against the said vendees, lessees, occupants, or holders of said lands, or any or either of them, at any time within twenty years next before the commencement of this suit; therefore the said defendant doth plead the said matters of limitation in bar to the complainant's bill, and prays the judgment of this honorable court whether he shall be compelled to make any further answer to said bill, and prays to be hence dismissed, with her costs in this behalf most wrongfully sustained.

O. H. SMITH,
Solicitor for the State of Indiana.

And the said defendant, by her counsel, comes, and by protestation, not confessing or acknowledging any or all of the matters and things in said bill of complaint stated to be true, as stated therein, for plea to so much of said bill as seeks to charge the said defendant with the value of the said lands specified in the bill, or the proceeds of the sale thereof, saith, that the said supposed causes and grounds of equity did not accrue, or either of them, to the said complainants at any time within six years next before the commencement of this suit; nor did such causes of equity, or either of them, accrue to the said complainants against the said vendees or lessees of this defendant at any [time] within six years next before the commencement of this suit; therefore the said defendant doth plead the same in bar to the said complainans' bill, so far as before herein stated, and prays the judgment of the court whether she shall be compelled to make any further answer to so much of said bill, and hence prays to be dismissed with her costs wrongfully sustained.

O. H. SMITH,
Sol. for defendant.

And the said defendant, by protestation, not confessing or acknowledging all or any of the matters in the bill of complaint to be true, for plea to the same says, that the said complainants ought not to have or maintain the said suit against this respondent; because she says, that this respondent and the said purchasers and lessees of said lands, for more than twenty years next before the commencement of this suit, have been in the quiet and peaceable possession of the said lands (for which the complainants seek a decree) under an adverse title in right of this respondent; and therefore the said defendant doth plead the same in bar to this suit, and prays the judgment of the court, whether she shall be compelled to make any further answer to said bill so far as the lands and the proceeds thereof are concerned, for which the complainants seek a decree, and hence prays to be dismissed with her costs.

O. H. SMITH,
Sol. for respondent.

And the said defendant, for answer to said bill of complaint, or to so much thereof as she deems it necessary to make answer unto, reserving all manner of exceptions to the said bill, she answers and says, that she relies, as a distinct and sufficient bar to said suit, upon the statutes of limitation of the State of Indiana, and the act of the legislature of the State of Indiana, and the explanatory act thereto, authorizing this suit; and which several acts of the general assembly of the State of Indiana she makes a part of this answer. This respondent, stating and averring that said complainants ought not to have or maintain the said suit, because she says that this respondent, her vendees and lessees of said lands, for which said complainants seek a decree, have, for more than twenty years next before the commencement of this suit, been in the quiet and peaceable possession of said lands under an adverse title in right of this respondent, derived directly by grant from the United States; and

because she says that more than five years have elapsed since this respondent, or her vendees or lessees, have received any money as the proceeds of said lands next before the commencement of this suit, to which the complainants have any claim whatever, even if they or either of them have, at any time, received any sum of money whatever to the use of said complainants, which this respondent positively denies.

And this respondent, relying upon the bar aforesaid to this suit, and in no wise waiving the same, nor her said pleas or either of them, and reserving all exceptions to the untruth in fact, and erroneous inferences in law, contained in said bill of complaint, for answer thereto, or to so much thereof as she deems it necessary to make answer unto, she answers and says, that she expressly denies that there is in legal existence any such corporation as the said complainants, or that said complainants have any right or legal power to maintain said suit against this respondent.

This respondent believes it to be true, as stated in the bill, that the Vincennes land district, including parts of the States of Indiana and Illinois, (then territories,) was, with other districts, laid off by the act of Congress of 26th March, 1804; and that, among other reserves from sale made by said act in said district, was that of one entire township of land, to be located by the Secretary of the Treasury, for the use of a seminary of learning. And that one entire township of land for such use was afterwards located and designated by the order of the Secretary of the Treasury in the county of Gibson, in the territory of Indiana, which she admits to be the same land claimed by the complainants. But this respondent expressly denies, that said reservation and location, in any respect whatever, divested the United States of the legal or equitable title to the said land, or invested the said territories in which said land district was established, or said district, or the inhabitants thereof, and much less the complainants not in esse, with either the legal or equitable title to the same; but, on the contrary thereof, this respondent expressly states, that said township of land remained as a mere designated reservation, subject to the appropriation by grant of the United States, there being no grant made by said act, nor could there be, as there was no grantee to take expressed or designated by the act, the reservation from sale was made, and the use or object of the reservation declared, but no appropriation of either.

This respondent also admits, that said acts of the territory of Indiana, of 29th November, 1806, and 17th September, 1807, were passed, establishing and incorporating the Vincennes University, but denies that said university became legally incorporated under said acts, or that said corporation has ever since been continued in legal existence. She admits it to be true, that said acts contain substantially the provisions relative to said lands recited in the bill, but she expressly denies that said territorial government of Indiana had, at said time, any title to said land, or right or any authority, whatever, to pass said act appropriating said 4000 acres of said reservation, or any part of the same, to said complainants, or to authorize said complainants to take possession of, or to

lease the same; and this respondent expressly denies, that said territorial act of Indiana vested in said complainants any right or title whatever to said lands, or any right or authority to sell or lease the same, or to receive the proceeds thereof. Yet this respondent charges that said complainants under said acts sold said 4000 acres of land, and received the proceeds thereof, and converted the same to their own use, and leased a portion of the residue of said township of land, and received to their own use the proceeds thereof. The amount so received the said complainants are required to discover, the same being peculiarly within their own knowledge.

And this respondent expressly states, that so well satisfied was said complainants and their vendees of said lands, so sold by them, that the said acts of the territorial government of Indiana conferred no title, and gave no power or authority to the complainants to sell said lands; that said purchasers applied to Congress to ratify and confirm said sales, and Congress did, by act of 27th April, 1816, in consideration of the total want of title and power of complainants, and the ruin that it would bring upon the purchasers from the complainants, who had paid their money, and made their improvements in good faith, confirm said sales to said purchasers.

This respondent admits it to be true, that the complainants did, as before *state*, take possession and sell *and sell* a part of said lands, and continued to do certain acts as stated in the bill, under the aforesaid void acts of the territorial government of Indiana, during the territorial government.

This respondent readily admits the adoption of the constitution of the State of Indiana, containing the said section 1 of the 12th article of the constitution as stated in the bill.

This respondent further states, that the said reservation of said entire township of land, and both the legal and equitable title thereof still remaining in the United States, and no grant or appropriation of the same having been made by the United States to any special grantee, on the 19th of April, in the year 1816, by the act of Congress of that date, for the admission of the State of Indiana into the Union, the said township of land so reserved, with one other township of land, to be designated by the President of the United States, also reserved, was vested in the legislature of the State of Indiana, to be appropriated to the use of a seminary of learning; and this respondent especially states, that the act of 19th April, 1816, of Congress, was the first and only act that divested the United States of their title to said reservation of land, and by which act the State of Indiana was invested with legal title, and with an unlimited and unrestricted right to appropriate the same to such seminary of learning as she might designate.

This respondent admits the passage of the act of the general assembly of the State of Indiana, of the 24th December, 1816, referred to in the bill.

This respondent further charges it to be true, that [the] State of In-

diana, being invested with the title to said lands, with full power to appropriate the same and the proceeds thereof, for the use and purpose as herein before stated, passed the joint resolution of the 22d January, 1820, as stated in the bill; and did, under said joint resolution, by her legally authorized agent, immediately thereafter, take the quiet and peaceable possession of said lands, remaining unsold by said complainants, in virtue of the act of Congress of 19th April, 1816; and that she has ever since, and those claiming under her as lessees and vendees, had the quiet and peaceable possession of the same, with the use, rents, issues, profits, and proceeds of the sale of such portions as she has sold thereof, by claim wholly adverse to the title or claim set up by the claimants to the same.

This respondent admits it to be true, that an act of the general assembly of the State of Indiana was passed on the 2d January, 1822, as is stated in the bill with a preamble, as therein stated substantially, which preamble, this respondent charges, was true. But whether true or false, she states that the same was immaterial and unnecessary, as the Vincennes University, as such corporation, had at said time no legal or equitable interest whatever to said lands, or to the rents and profits thereof, either as lessees, or grantees, or reservees of the same.

This respondent, protesting that the said complainants have no right to compel a discovery of the proceeds of the sale of said lands and the amount of rents received by the State, and positively denying that the complainants have any legal or equitable interest in the same, and denying that the complainants have any legal power to sue, and that if they have, that the statutes of limitation of the State of Indiana are a complete bar both to the discovery and relief prayed, make the following statement, marked exhibit A, a part of this answer to said bill, as containing a true statement of the quality of said lands sold by the State, the amount received by the State from the proceeds thereof, with the gross amount of the sales made, the proceeds received from the rents of said lands, and the amounts paid by the State to her agents in the premises.

And this respondent further states, that, after the passage of the act of Congress of 19th April, 1816, and after the State of Indiana had been invested with the legal title to said two entire townships of land, including said township claimed by said complainants, the State of Indiana, by her several acts of legislation, appropriated said two townships of land, with the rents, issues, and profits thereof, to the "Indiana University," a State seminary of learning, located at Bloomington, in the county of Monroe, in said State, and within the Vincennes land district; which university was incorporated and established by said acts of legislation by said State, as the State university and seminary of learning, within the true intent, spirit, and meaning of said acts of Congress, reserving said lands, and investing them in the State of Indiana for the use of a seminary of learning; and said lands, with the proceeds thereof, and the rents and profits thereof, have, since said appropriation by the State as last above stated, been held in trust for the

use and benefit of the said "Indiana University," which is in a most prosperous condition, receiving its vitality and energetic powers from said acts of the legislature of Indiana, and is yearly diffusing the blessings of education to hundreds of our citizens, and is completely carrying into effect the objects of Congress, in reserving said townships of land and vesting them in the State of Indiana, for the laudable and beneficent purposes before stated.

This respondent admits the passage of the act of the general assembly of the State, of 17th January, 1846, and states, that an act explanatory thereof was passed by the general assembly of said State, approved January 14, 1847; said acts making but one act, this respondent makes a part of this answer.

This respondent denies all fraud, and having fully answered, prays to be dismissed with her costs.

O. H. SMITH,
Sol'r for the State of Indiana.

The exhibit marked A, referred to in the above answer, and made a part thereof, is in the words and figures following, to wit: "A statement of the number of acres of land in the Gibson county seminary township. (Township No. 2 south, range eleven west.) The quantity sold by the State and the quantity unsold. Also the amount sold for, and amount received as, principal and interest, as appears by the books of the State auditor's office, up to the close of last report of commissioner thereof, Nov. 30, 1846, viz., from September 3d, 1827, to Nov. 30, 1846.

Sept. 3, 1827, being the first sale had by the State.

	Acres. Hds.
1. The quantity of land sold by the State in the Gibson seminary township of land, by Jas. Smith, commissioner	16,848.95
2. The quantity previously sold by State, through Wilson, Neely & Smith, commissioners, (Oct. 21, 1822)	569.00
Total quantity sold by State	17,417.95
3. The quantity remaining unsold	1,588.75
4. The quantity sold by Vincennes University	4,086.60
Making total quantity of land in said township	32,093.30
5. The total amount for which the above 17,417.95 sold for, as appears by the returns of the proper commissioner, is	$22,639 83½
6. The total amount received by the State therefor is, in principal	16,374 89
Leaving due the State as principal	$6,264 94½

7. The total amount received thereon as interest, is -	8,948 87
To which add No. 6, principal received - -	16,374 89
Making the total receipts of every kind -	$25,323 76

STATE AUDITOR'S OFFICE,
Indianapolis, Feb'y 27, 1847.

I, Douglass Maguire, auditor of public accounts for the State of Indiana, do hereby certify, that the foregoing statement relating to the Gibson seminary township of lands is correct, as appears by the books of my office.

In witness whereof I have hereunto set my hand and affixed my seal [of] office, the day and date first above written.

[L. S.]

D. MAGUIRE.
Auditor of State.

And afterwards, to wit, at the term of said Marion circuit court, begun and held at the court-house in the city of Indianapolis, county of Marion, and State of Indiana aforesaid; on Monday, the fifth day of April, in the year of our Lord one thousand eight hundred and forty-seven, before the honorable the judges above named, and continued before the same judges until Tuesday, the sixth day of said month and second judicial day of said term, come the parties, by their solicitors, and the defendant having filed her answer herein in vacation, on her motion, the complainants are ruled to reply; and time is given, &c.

And afterwards, to wit, on Thursday, the twenty-ninth day of said last named month, and twenty-second judicial day of said term, come the parties by their solicitors, and by their consent the depositions taken and filed herein are now published, and this cause is set down for hearing. And time is given, &c.

Which depositions as above published are in the words and figures, following, to wit:

Depositions taken at the office of Samuel Judah, in Vincennes, on Monday, the 12th day of July, 1847, between the hours of ten o'clock, a. m., and 4 o'clock, p. m., in pursuance of the notice hereto attached, and to be read in evidence in a suit in chancery pending in the Marion circuit court, wherein the President and Trustees for the Vincennes University are complainants, and the State of Indiana is defendant, and behalf of the complainants.

Samuel Judah, being sworn, says: That he became a resident of Vincennes some time in December, 1822, and that some time after, and as he believes before 1825, he was elected a trustee of the Vincennes University. That he distinctly remembers having attended at least one meeting, held at the office of Judge Blackford, in Vincennes; that Judge Blackford was a trustee, and the secretary of the *the* trustees,

and was so at the time of his removal from Vincennes to Indianapolis, which witness thinks took place about 1825.

Said Judah further says, that for many years he has been familiar with a manuscript book, which purports on its title page to be the "Minutes and proceedings of the Board of Trustees for Vincennes University, Indiana territory." That said book is now in his custody as the present secretary of said board; and that he received it from Martin Robinson, the former secretary of said board; that all the entries in said book, from the seventh day of April, 1817, up to the 24th of April, 1824, both inclusive, and being pages numbered from 98 to 124, and both inclusive, except the entries on pages 103, and on parts of 102 and 104, are all in the handwriting of Judge Blackford; that in said book there is a blank on part of page 114, and all of page 115, at the end of the meeting of the 23d December, 1820; and that on page 122 and on all of page 123, and between the proceedings of the meeting in October, 1823, and that of April, 1824, there is another blank. And said Judah further says, that the seventeen sheets attached hereto in the handwriting of Henry Fauntleroy, and signed each at the bottom with the signature of this witness, and numbered 1 to 17, are true extracts and correct copies from the said minute book made by the said Fauntleroy, and compared by him and the said Judah.

Said Judah further says, that while particular circumstances have impressed on his memory the fact of his presence at one meeting of said trustees previous to 1825, he thinks he was present at more than one, and that by accident Judge Blackford then remaining long at Indianapolis, the rough minutes of several meetings were not entered by him in said book, and have been lost.

But he says that there was in 1824, and at Vincennes, an actual board of trustees for the Vincennes University, which did actually assemble from time to time, and act as such.

And said Judah further says, that he personally knew Elias McNamee, Samuel T. Scott, Robert Buntin, Jacob Keykendall, Jacob Call, Henry Ruble, Nathaniel Ewing, Francis Vigo, John D. Hay, John Law, Isaac Blackford, Lawrence S. Sherlin, John C. S. Harrison, and Richard M. Janson; that they were all residents of Vincennes at the time of his settlement there in December, 1822; that Lawrence S. Shuler died in May, 1827; Jacob Call died some time after July, 1825; Samuel T. Scott died in August, 1828; Jacob Keykendall died in September, 1833; Elias McNamee died in October, 1834; Francis Vigo died in the spring of 1836; Robert Buntin died in February, 1839; Henry Ruble died in November, 1839; Nathaniel Ewing died in 1846, and John D. Hay in November, 1840; that John C. S. Harrison, some time after March, 1829, removed from Vincennes to the State of Ohio, and died in 1830 or 1831; that at some time after 1824, Richard M. Janson removed from Vincennes to Washington, in Daviess county, and was in business as a merchant there for some time, and then moved to Baltimore, but is well known to witness, and was alive last winter; that John Law has always continued a resident of Vincennes; that

Isaac Blackford removed from Vincennes to Indianapolis, and that witness has always been a resident of Vincennes since 1822.

And said Judah further says, that in all the month of February, 1838, the following persons were alive, to wit, Isaac Blackford, John Law, Samuel Judah, John D. Hay, Robert Buntin, Henry Ruble, Nathaniel Ewing, and Richard M. Janson; that they all had been acting trustees for the Vincennes University; and that he has no knowledge that their seats in said board had been vacated, and that the persons under the said names above intended by him are the same persons named in the said seventeen sheets attached.

SAM'L JUDAH.

Henry Fauntleroy, being sworn, says, that the seventen pages of manuscript attached hereto, and signed with the signature of Samuel Judah, and numbered from one to seventeen, are true extracts and copies taken by me from a book in the possession of Samuel Judah, and having on its first page the title "Minutes and proceedings of the board of trustees for Vincennes University, Indiana territory."

H. FAUNTLEROY.

John Law, being sworn, says, that he has resided in the town of Vincennes since December, 1817; I am well acquained with the handwriting of Judge Blackford, having frequently seen him write, and frequently corresponded with him; I have examined the manuscript book entitled "Minutes and proceedings of the board of trustees for Vincennes University, Indiana territory," now in possession of Samuel Judah, esquire, and that all the entries in said book from page 98 to 124, both inclusive, with the exception of page 103, and part of 102 and 104, are in the handwriting of Isaac Blackford; I was a member of the board of trustees, and served as such, I believe, in the year 1822–'3, but am not certain as to the exact time.

JOHN LAW.

Abner T. Ellis, being duly sworn, says, that he became a resident of Vincennes in the fall of 1830, and that he was personally acquainted with Elias McNamee, Robert Buntin, Jacob Kuykendall, Henry Ruble, Nathl. Ewing, Francis Vigo, John D. Hay, John Law, Samuel Judah, Isaac Blackford, and Richard M. Janson, all of whom, except Richard M. Janson, were residents of *the* Vincennes or its vicinity, in Knox county, at the time of the settlement of deponent there in 1830, where he has resided ever since.

Further said deponent states, that Jacob Kuydendall died in September, 1833; Elias McNamee in October, 1834; Francis Vigo in the spring of 1836; Robert Buntin died in February, 1839; Henry Ruble died in November, 1839; John D. Hay died in November, 1840; and Nathl. Ewing in the summer or fall of 1846. That in March, 1838, and in fact till February next ensuing, there were living, as deponent personally knows, Henry Buntin, Henry Ruble, John D. Hay, Nathaniel Ewing, Isaac Blackford, Richard M. Janson, John Law, and Samuel

Judah; and that these are the identical persons referred [to] in the depositions of Law and Judah.

ABNER T. ELLIS.

STATE OF INDIANA, *Knox county, ss:*

The undersigned, a justice of the peace of Knox county, certifies that, in pursuance of the notice hereto attached, on Monday, the 12th day of July, 1847, between the hours of ten o'clock, a. m., and four o'clock, p. m., of said day, at the office of Samuel Judah, in Vincennes, Samuel Judah, Henry Fauntleroy, John Law, and Abner T. Ellis, then and there appeared before the undersigned as witnesses to be examined in a certain suit in chancery, now pending in the circuit court of Marion county, Indiana, wherein the President and Trustees for the Vincennes University are complainants, and the State of Indiana is defendant, was then and there by me duly sworn according to law, and that they respectively wrote each his own deposition in the presence and under the direction of the undersigned, and then subscribed the same; that no person appeared in behalf of the defendant; and that the said depositions were taken at the place aforesaid, and between the hours and on the day aforesaid.

Witness my hand and seal, the 12th day of July, 1847.

J. B. MARTIN, *J. P.* [L. S.]

Justice's fees, 4 depositions	$1 00
1,500 extra wording -	1 75
	$2 75

The notice attached to the above depositions and certificate, and referred to therein, is in the words and [figures] following, to wit:

The PRESIDENT and TRUSTEES for the Vincennes University vs. The STATE OF INDIANA. } In chancery.

The counsel for the defendant will take notice that, on Monday, the 12th day of July next, between the hours of 10 o'clock, a. m., and 4 o'clock, p. m., of said day, and from day to day thereafter as long as may be necessary, at the office of Samuel Judah, in Vincennes, the complainants will take the depositions of John Law, Samuel Judah, Abner T. Ellis, Henry Fauntleroy, William R. McCord, and Jacob Harper, to be read in evidence in the above entitled cause, now pending in the Marion circuit court.

SAML. JUDAH,
Sol. for complts.

Vincennes, June 24, 1847.

Which notice is endorsed as follows, to wit: A copy of the within notice was served upon me, on this 28th day of June, 1847.

O. H. SMITH, *Atty. for deft.*

And the said seventeen sheets or pages attached to the foregoing depositions, and referred to therein, are in the words and figures following, to wit:

At a meeting of the Trustees of the Vincennes University, held at the territorial secretary's office, in Vincennes, on Saturday, the 6th day of December, A. D. 1806, pursuant, and under the acts of the last session of the general assembly, one, entitled "An act to incorporate an university in the Indiana territory," and the other, "An act supplemental to the aforesaid act," when were present the following members, viz: William Henry Harrison, John Gibson, sr., Waller Taylor, Henry Vandenburgh, John Baddollet, Nathaniel Ewing, John R. Jones, Jacob Kuykendall, Elias McNamee, Samuel Gwathmay, John Johnson, Luke Decker, Francis Vigo, William Bullet, jr., James Johnson, George Wallace, jr., and General W. Johnston.

The board proceeded, by ballot, to elect a president, when, upon counting the ballots, William Henry Harrison, esq., was declared duly elected by an unanimous vote, when he was conducted to the chair; from whence he made acknowledgments, and requested an observance of due order and decorum.

The board then proceeded, in like manner, to elect a treasurer, when, upon counting the ballots, James Johnson, esq., was declared duly elected.

The board then proceeded, in like manner, to elect a clerk, when, upon counting the ballots, General W. Johnson was declared duly elected.

Monday, December 15th, 1806.

The board met according to adjournment; present the following members: William H. Harrison, president, John Gibson, sr., Francis Vigo, James Johnson, George Wallace, sr., George Leech, John Bodollet, Luke Decker, Waller Taylor, ——Johnson, Elias McNamee, John R. Jones, William Bullet, jr., Peter Jones, and General W. Johnston.

(Samuel Judah, 1.)

Friday, December 19th, 1806.

The board met according to adjournment; present the following members: William H. Harrison, president, John Gibson, Jacob Kuykendall, Francis Vigo, George Leech, Samuel Judah, General W. Johnston, John Johnson, George Wallace, jr., Henry Vanderburgh, Jesse B. Thomas, William Bullet, jr., Elias McNamee, John R. Jones, John Boddollet, Waller Taylor, James Johnson, Henry Hurst, and Peter Jones.

Friday, January 2d, 1807.

The board met according to adjournment. Present, the following members: William H. Harrison, president, Henry Vanderburg, Henry Hurst, George Leech, Waller Taylor, John Johnson, George Wallace,

jr., Samuel McKee, John R. Jones, William Bullet, jr., Elias McNamee, Gen'l W. Johnston.

Friday, January 9th, 1807.

The board met according to adjournment. Present, the following members: William H. Harrison, president, Henry Vanderburgh, John Gibson, George Wallace, jr., Luke Decker, Peter Jones, John Badollet, John Johnson, John R. Jones, Samuel McKee, Elias McNamee, Henry Hurst, Fr's Vigo, James Johnson, Gen'l W. Johnston.

Friday, August 7th, 1807.

The board met according to adjournment. Present, the following members: William H. Harrison, president, Luke Decker, John Johnson, James Johnson, John Gibson, sr., Elias McNamee, Peter Jones, Francis Vigo, Samuel McKee, John R. Jones, Nath'l Ewing, John Badollet, Benj. Parke, Henry Vanderburgh, George Wallace, jr., Henry Hurst, General W. Johnston. The president pro tem. laid before the board a letter from General Harrison, as a member, stating therein his resignation.

Monday, August 17th, 1807.

The board met according to adjournment. Present, the following members: Gen'l John Gibson, president pro tem., George Wallace, jr., Peter Jones, John Johnson, James Johnson, Francis Vigo, Luke Decker, Dr. Kuykendall, Gen'l W. Johnston, John Badollet, Elias McNamee. Upon the resignation of Gen'l W. Johnston as a clerk to the board of trustees, Jonathan Jennings was appointed clerk pro tem. A letter was received from Gen'l W. Johnston, stating his resignation as a member of said board.

(Samuel Judah, 2.)

Saturday, August 29th, 1807.

The board met according to adjournment; the following members present: Gen'l John Gibson, president pro tem., Peter Jones, John Badollet, Elias McNamee, Nathaniel Ewing, John Johnson, Francis Vigo, Jacob Kuykendall, J. R. Jones, Waller Taylor, Samuel Gwathmey, Henry Hurst, Henry Vanderburg, William Bullet, and James Johnson. The board proceeded to the election of a clerk, in the room of G. W. Johnston, resigned; and upon counting the ballots, there appeared for J. R. Jones one, for Henry Hurst five, and for Jonathan Jennings seven; who was thereupon declared duly elected. Samuel Gwathmey stated his resignation as a member of the board.

Ordered, that the board proceed to elect a member in the place of Gen'l W. Johnson and Samuel Gwathmey, resigned. Upon counting the ballots, Charles Smith was declared duly elected.

Saturday, September the 12th, 1807.

The board met according to adjournment. The following members were present: Gen'l Gibson, Elias McNamee, Jas. Johnson, Waller Taylor, Peter Jones, John R. Jones, Luke Decker, Benjamin Parke, Jacob Kuykendall, Francis Vigo, Henry Vanderburgh, John Bodollet, and William Bullet. Gen'l Gibson appointed president pro tem. A letter was received from George Wallace, stating his resignation as a member of the board.

Resolved, That the board go into the ballot for a member of the same in the room of George Wallace and Samuel Gwathmey, resigned.

When, upon counting the ballots, Governor Harrison was declared duly elected.

Ordered, That the board proceed in same manner to elect a president.

Upon counting the ballots, there appeared a majority for Governor Harrison, who was thereupon declared to be duly elected, and accordingly took his seat. A letter was received from Benjamin Parke, esq., stating his resignation as a member of the board.

(Samuel Judah, 3.)

At a special meeting of the board, in pursuance of the president's advertisement, on Friday, October 16, 1807, the following members were present: Wm. H. Harrison, president, John Bodollet, John Johnson, Francis Vigo, Jacob Kuykendall, Waller Taylor, Peter Jones, James Johnson, Elias McNamee, Nath'l Ewing, Henry Vanderburgh, William Bullet. A letter was read by the president, stating the resignation of Henry Hurst.

Monday, April 4th, 1808.

At a stated meeting of the Board of Trustees of the Vincennes University, the following members were present: William H. Harrison, president, John Johnson, Nath'l Ewing, Sam'l McKee, jr., F. Vigo, P. Jones, Ch. Smith, James Johnson, John C. Jones, Jacob Kuykendall, Henry Vanderburg, Gen'l Gibson, John Badollet, George Leech: ordered, that this board proceed to the election of a member, to supply the vacancy occasioned by the resignation of two members of the board of trustees. The board accordingly proceeded to the election of a member; upon counting the ballots, Robert Buntin was declared to be elected.

Saturday, May 21st, 1808.

At a special stated meeting of the board, in pursuance of the president's advertisement, the following members were present; W. H. Harrison, president, Nath'l Ewing, John Badollet, Francis Vigo, John Johnson, Sam'l McKee, Charles Smith, James Johnson, Gen'l J. Gibson, Henry Vanderburgh, Peter Jones, Jacob Kuykendall, Elias McNamee; on motion, resolved, that John D. Hay be appointed clerk pro tem. to the board, and that he receive two dollars for each day's service.

(Sam'l Judah 4.)

Saturday, September 16th, 1808.

The board met in pursuance of the president's advertisement, and the following members were present; Wm. H. Harrison, president, Jno. R. Jones, Henry Vanderburgh, Robert Buntin, Charles Smith, Waller Taylor, John Johnson, George Leech, Jacob Kuykendall, John Gibson, Sam'l McKee, and James Johnson. Waller Taylor resigned his seat as a member of the board.

Monday, November 21st, 1808.

The board met in pursuance of the president's advertisement, when the following members were present; Wm. H. Harrison, president, John Gibson, Henry Vanderburgh, Luke Decker, Jacob Kuykendall, Robert Buntin, Peter Jones, Sam'l McKee, Charles Smith, and John Johnson. The resignation of Jonathan Jennings, as clerk of the board, was received and read; after which the board elected John D. Hay their clerk, by a unanimous vote. The board then went into an election for a member, when Benjamin Parke was elected unanimously.

Board trustees, March 24, 1810.

Three members of the board, in the absence of the president, having advertised the present meeting, there were present Henry Vanderburgh, Nathaniel Ewing, Robert Bunting, Charles Smith, James Johnson, John Johnson, Jno. Gibson, sr., and George Leech, a majority of the whole number of members. Peter Jones declining to act as clerk pro tem. of the board, upon his renunciation G. W. Johnson was unanimously elected as clerk pro tem.

Board of trustees, April 11, 1810.

This being the day to which the board last adjourned, there were present Wm. H. Harrison, president, H. Vanderburgh, Peter Jones, Geo. Leech, Nathaniel Ewing, Elias McNamee, Francis Vigo, Jacob Kuydendall, Jno. Gibson, Jas. Johnson, Benj. Parke, Jno. Badollet, Jno. Johnson, Charles Smith, Luke Decker. The board proceeded to the election of a member, when, upon counting the ballots, Taussaint Dubois was declared duly elected.

June 10, 1810.

This being the day appointed by the president, agreeably to an advertisement; members present, William H. Harrison, Peter Jones, Chas. Smith, Henry Vanderburgh, Jno. Gibson, Tau'st Dubois, Jas. Johnson, Jacob Kuykendall, and John Johnson; Jno. D. Hay resigned as clerk of the board. On motion, ordered, that the board proceed to the election of clerk; when, upon counting the ballots, John Johnson was elected.

The board met agreeably to adjournment on Friday, the ninth day of May, 1811. Members present: Chas. Smith, Jacob Kuykendall, Nath'l Ewing, James Johnson, Henry Vanderburgh, Elias McNamee, Peter Jones, Taussaint Dubois, Francis Vigo, Robert Buntin, John Gibson, Benjamin Parke, John Johnson. William Henry Harrison resigned his seat as a member of this board of trustees. John Badollet resigned his seat as member of this board of trustees. Resolved, that the board now go into the election of a president; when, upon counting the ballots, Benjamin Parke was elected.

(Samuel Judah, 5.)

Wednesday, April 22, 1812.

The board met agreeably to adjournment; members present, Benjamin Parke, Nathaniel Ewing, Francis Vigo, John Gibson, Charles Smith, Robert Buntin, James Johnson, John Johnson. The president laid before the board the resignation of Jacob Kuykendall, a member of the board, which was accepted.

Wednesday, August 26, 1812.

The board met agreeably to adjournment; members present, Benjamin Parke, John Gibson, Elias McNamee, Peter Jones, Charles Smith, James Johnson, Nathaniel Ewing, John Johnson. The board proceeded to elect two members to fill the vacancies occasioned by resignation of William Henry Harrison and John Badollet; when, upon counting the ballots, Wilson Lagow and William Jones were elected.

April 5, 1813.

This being the semi-annual meeting of the board of trustees for the Vincennes University, appointed by law, the board met accordingly; members present, Benjamin Parke, president, Nathaniel Ewing, Francis Vigo, Robert Buntin, James Johnson, Charles Smith, Elias McNamee, John Johnson. The president laid before the board the resignation of John Gibson, a member of this board, which was accepted.

Saturday, 10th of April, 1813.

The board met agreeably to adjournment; members present, Benjamin Parke, Nathaniel Ewing, Elias McNamee, Taussaint Dubois, Robert Buntin, and John Johnson. There not being sufficient members present to form a quorum, the board adjourned till Saturday next, 17th, at one o'clock.

Saturday, 17th day of April, 1813.

The board met according to adjournment; members present, Benja-

min Parke, president, Taussaint Dubois, James Johnson, Wilson Lagon, Robert Buntin, Elias McNamee, Charles Smith, Nathaniel Ewing, and John Johnson. On motion of E. McNamee, ordered, that the board do now proceed to the election of three members to fill the seats of John Gibson, resigned, Luke Decker, and George Leech, who have forfeited their seats by not attending the semi-annual meetings of the board, agreeably to law. And, upon counting the ballots, it appeared that Edward Scull, Samuel Scott, and John D. Hay, were unanimously elected.

Monday, April 3, 1815.

This being the day appointed by law for the semi-annual meeting of the board of the trustees of the Vincennes University; members present, Benjamin Parke, president, John D. Hay, Elias McNamee, William Jones, Samuel T. Scott, Charles Smith, Taussaint Dubois, Nathaniel Ewing, Francis Vigo, and Robert Buntin. On motion, ordered, that the board now proceed to the election of a member in the room of Edward Scull, who has removed from the territory; and, on counting the ballot, it appeared that Isaac Blackford was unanimously elected.

Monday, November 6, 1815.

The board met agreeably to an advertisement of the president; members present, Benjamin Parke, president, Robert Buntin, Francis Vigo, Peter Jones, John D. Hay, William Jones, Taussaint Dubois, Charles Smith, Nathaniel Ewing; James Johnson, a member of the board and treasurer of the same, sent to the board his resignation as member and treasurer of said board, which was laid before the board by the president, and accepted of by the board.

(Samuel Judah, 7.)

Saturday, April 6, 1816.

The board met agreeably to adjournment; members present, Robert Buntin, Charles Smith, John D. Hay, Nathaniel Ewing, Francis Vigo, Peter Jones, Samuel T. Scott, and Isaac Blackford. On motion, resolved, that Isaac Blackford be appointed clerk pro tem. On motion, resolved, that the board proceed to the election of three members of the board in the room of when, upon counting the ballots, it appeared that Charles Henkley, David Raymond, and John Badollet, were duly elected.

Monday, 7th April, 1817.

This being the day appointed by law for the meeting of the board, the following members were present, viz: Benjamin Parke, president, John D. Hay, William Jones, Samuel T. Scott, Peter Jones, Natha-

niel Ewing, John Badollet, Isaac Blackford. The president laid before the board the resignation of Mr. John Johnson, as clerk of the board. On motion, Isaac Blackford was appointed clerk.

Saturday, November 15, 1817.

The board met agreeably to adjournment; present, Benjamin Parke, president, John D. Hay, Charles Smith, Nathaniel Ewing, Samuel T. Scott, Peter Jones, William Jones, and Isaac Blackford. A memorial to Congress was presented by Mr. Parke for the consideration of the board, in the following words:

To the honorable the Senate and House of Representatives of the United States in Congress assembled.

The petition of the Board of Trustees for the Vincennes University respectfully sheweth:

That by an act of Congress, making provision for the disposal of the public lands in the Indiana territory, passed the 26th March, 1804, an entire township, to be located by the Secretary of the Treasury, was reserved for the use of a seminary of learning; under the authority of (Samuel Judah, 8:) that law, the Secretary of the Treasury selected town[ship] 2 south, range 4 west, of the second principal meridian, in the district of Vincennes; believing that they had the necessary authority to dispose of all or any portion of the land for the purpose contemplated by Congress, the general assembly of the Indiana territory, in the year 1806, enacted a law for establishing a university at Vincennes, appointing trustees to carry the same into effect, and authorized the sale of 4,000 acres, for the purpose of putting the institution into immediate operation. That a quantity of land has been sold by the board of trustees, the title to the purchasers confirmed by an act of Congress, passed the 27th day of April, 1816, and the amount received on account of the sale disbursed toward the erection of a spacious building, suitable for the purposes of a public school.

Your petitioners would further respectfully represent, that, with the view of obtaining an active fund for the benefit of the institution, the board of trustees, conformably to the provisions of the act of incorporation, offered to lease, in quarter sections, the remaining part of the township. The country, however, must be settled, and improvements considerably advanced, before any reliance can be placed on a fund derived from that source. Those possessing the means will purchase; others, confiding in the indulgence of the Government, will spread themselves along the frontiers on the public lands; and thousands now prefer the latter to a lease, on liberal terms, of the land appropriated for the use of the university. Few leases being taken, and believing the arrangement likely to prove unproductive, at least for many years, the board have, for the present, abandoned the measure. Having no other means than the prices of tuition for the support of teachers, the

board have been able to open a grammar school only, and many years must elapse before such a number of scholars will offer as would justify the employment of teachers in the various and higher branches of literature and philosophy. Had the board the ability of procuring a competent library and philosophical apparatus, and of supporting the necessary professors, the institution might shortly be rendered respectable and advantageous to the country. This desirable object can only be obtained by the sale of the seminary land, from which a fund might be immediately realized, without impairing or hazarding the principal, that would be amply sufficient for all the purposes of a useful and splendid establishment. Your petitioners would therefore respectfully submit to the wisdom of Congress the propriety of selling the balance of the land in the seminary township, reserved by the act of March, 1804, vesting the amount in the stock of such bank or banks as Congress might select for the purpose; and that the interest accruing from the stock should be vested in the board of trustees for the use of the Vincennes University. Your petitioners, for the information of Congress, touching the principles upon which the institution is founded, beg leave to annex the act for incorporating the Vincennes University; which memorial being considered, was approved by the board, and the president requested to forward a copy thereof to Congress.

(Samuel Judah, 9.)

Monday, April 6, 1818.

This being the semi-annual meeting of the Board of Trustees of the Vincennes University, the following members appeared, viz: Benjamin Parke, president, Wm. Jones, Nathl. Ewing, Samuel T. Scott, John Badallet, Robert Buntin, Francis Vigo, and Charles Smith. The death of James Johnson, *Johnson*, Peter Jones, and the removal of Daniel Raymond, having occasioned four vacancies, the board proceeded to the election of four members; when, upon counting the ballots, it appeared that Alexander Walcott, William C. Lane, Jeremiah Wood, and George Ewing, were duly elected.

(Samuel Judah, 10.)

Saturday, June 20, 1818.

The board met agreeably to adjournment. Members present, Benjamin Parke, president, J. Badollet, R. Buntin, E. McNamee, George Ewing, Nathl. Ewing, S. T. Scott, F. Vigo, Chas. Smith, J. D. Hay, and Jeremiah Wood. On motion, resolved, that the board now proceed to the election of a member to fill the place of D. A. Walcott, who refused to serve as a member of this body. Accordingly the board proceeded to the election, when, on counting the votes, it appeared that Isaac Montgomery was unanimously elected.

Saturday, 22d August, 1818.

The board met pursuant to adjournment. Present, Benj. Parke, president, Nathl. Ewing, Saml. T. Scott, John D. Hay, Jeremiah Wood, George Ewing, Charles Smith, Isc. Blackford. The president

informed the meeting that there was a vacancy in the board of trustees occasioned by the death of W. C. Lane; whereupon, on motion, the board proceeded to the election of a member to supply such vacancy, and upon counting the ballots, Moses Tabbs was declared duly elected.

Friday, 17th December, 1818.

The board met pursuant to adjournment. Present, Benj. Parke, president, Chs. Smith, Elias McNamee, Robert Buntin, Moses Tabbs, John Badollett, John D. Hay, George Ewing, Jeremiah Wood, Francis Vigo. The committee appointed to draught a petition to Congress, relative to the sale of the seminary lands, report as follows, namely:

VINCENNES UNIVERSITY, *17th December*, 1818.

To the Senate and House of Representatives of the United States in Congress assembled.

(Samuel Judah, 11.)

The memorial of the Trustees of the Vincennes University respectfully represents, that, by an act of Congress, passed on the 26th day of March, 1804, for the disposal of the public lands in the Indiana territory, an entire township of six miles square was reserved for the use of a seminary of learning; that, under the authority of that law, the Secretary of the Treasury selected township No. 2 south, in range No. 11 west, of the second principal meridian, of the district of Vincennes; that the general assembly of the Indiana territory, in the year 1806, passed a law for establishing a university at Vincennes, appointing a board of trustees to carry the said law into effect, and authorizing the sale of 4,000 acres of land for the purpose of putting the institution into immediate operation. That quantity of land has been sold, and the proceeds expended in the erection of a large and commodious building for a public school.

Your memorialists would further respectfully represent, that, under the authority of the act of incorporation, the board of trustees attempted to lease, in quarter sections, the remaining part of these lands. This attempt has not succeeded according to their wishes, and experience forbids the expectation of deriving any considerable benefit or aid from this source. Thus, in brief, the affairs of the seminary stood, when, in the autumn of 1817, the board were induced to make application to your honorable body for authority to sell the remaining part of the aforesaid township of lands, and invest the proceeds of the sale in some active bank stock, the annual dividend of which might be expended in putting the institution into immediate and useful operation. And your memorialists beg the indulgence of your honorable body while they thus early renew this application, and while they attempt to state the reasons which have induced them to it. And they are encouraged to this measure from the consideration that all the reasons in favor of such a course at that time are now increased in a duplicate ratio, and that

(Samuel Judah, 2.)

many reasons are added to those which at that time existed. Our population is rapidly increasing; the youth of our country are becoming numerous; the means of initiating them into a knowledge of the principles of polite literature and the useful sciences are not within our reach. Few of our citizens are able to send their children to other States for an education, and those who do not must consent to behold their offspring arrived at years of maturity without the advantages of their eastern brethren.

Your memorialists feel a lively interest, not only for the present respectability, but also for the future prosperity of this institution; and they would not presume to make the application did they not feel the strongest conviction that the sale of these lands would, even at this time, create a fund amply sufficient for all the purposes contemplated by Congress, or could they believe that such a measure would impair the seminary funds, or violate the rights of posterity. Nearly 20,000 acres of land, sold at a minimum price of $10 per acre, will produce a sum of not less than $200,000. To this price your memorialists are willing to be limited—a consideration that does away one of the principal objections urged to the measure by the committee of the Senate, to whom this subject was referred at the last session of Congress. Such a precaution will effectually prevent any unwarrantable sacrifice in the price that might have been apprehended by your honorable body. It is also observable, that this township of land is situated in the vicinity of the village of Princeton, and that on two of the quarter sections within it saw mills have been erected, with no other means of supply but from the timber of the seminary lands, and that daily depredations are committed upon the most valuable of this timber. Your memorialists need hardly suggest the idea that this circumstance will not only prevent the increase of the value of these lands, but must gradually diminish their value; a circumstance which the utmost vigilance of your memorialists will not be able to prevent. Your memorialists do not indulge the expectation that they shall be able to force this institution immediately into a respectability that will vie with older and longer established universities. Their business and their pleasure will be to foster the infant child; time will be required to bring it to maturity. They ask only the privilege of expending so much of the profits of the fund with which the institution is endowed, in procuring such a library, such a philosophical apparatus, and in employing such teachers as can be useful in the present state of society; while the balance may be added to the original fund, and held in reserve for a more enlarged and generous course of education. From these considerations, and under these impressions, your memorialists feel it their duty respectfully to pray your honorable body, that the remainder of the aforesaid township of land be offered for sale at public vendue, at such a time and place, and in such a manner, as to your honorable body may appear proper, under the superintendence of persons appointed for that purpose, at a price not less than ten dollars per acre. That the proceeds of this sale be laid out in

the purchase of stock in the State Bank of Indiana, or in such other bank as Congress may direct; and that the dividends be vested in the trustees of the Vincennes University, to be by them expended for the use of said University.

Resolved, that said report be concurred in, and that copies thereof be forwarded to our Senators and Representatives in Congress.

(Samuel Judah, 14.)

3d April, 1820.

This being the day for the semi-annual meeting of the trustees of the University, the following members appeared: Benj. Parke, pres't, Nath'l Ewing, Francis Vigo, Elias McNamee, John Badollet, John D. Hay, Moses Tabbs, and Charles Smith. The board proceeded to the election of a member to supply the vacancy occasioned by the death of Mr. Jones; when upon counting the ballots it appeared that George McDonald, esq., was duly elected.

26th June, 1820.

The board met pursuant to notice: Present, Benj. Parke, pres't, George McDonald, Moses Tabbs, John Badollert, Charles Smith, John D. Hay, Sam'l T. Scott, Elias McNamee, and Jeremiah Wood. On motion, the board proceeded to the election of one member to supply the place of Isaac Montgomery; when, on counting the ballots, it appeared that L. S. Shuler was duly elected.

29th December, 1820.

This being the day to which the board adjourned, the following members were present, viz: Nath'l Ewing, John D. Hay, Robert Buntin, L. S. Shuler, Jeremiah Wood. There not appearing a sufficient number of members present to form a board, the meeting adjourned till Tuesday next.

Tuesday, 2d January, 1821.

The board met agreeably to adjournment: Present, Sam'l T. Scott, Nath'l Ewing, Elias McNamee, Francis Vigo, Jeremiah Wood, L. S. Shuler, Robert Buntin, John D. Hay, and Isaac Blackford. The clerk laid before the board a letter from Mr. Parke, resigning his seat as a member. Jonathan Doty and R. M. Janson were elected members of the board.

Saturday, January 6, 1820.

The board met agreeably to adjournment: Present, Jeremiah Wood, Sam'l T. Scott, R. M. Janson, Jonathan Doty, L. S. Shuler, Elias McNamee, Robert Buntin, and Isaac Blackford. David Hart was elected a member of the board in the place of Benjamin Parke, resigned.

Friday, January , 1821.

The board met pursuant to adjournment: Present, Jeremiah Wood, Francis Vigo, Robert Buntin, David Hart, Jonathan Doty, Richard M. Janson, Samuel T. Scott, L. S. Shuler, Elias McNamee, and Isaac Blackford. The resignation of John Badollet as a member of this board, was received and accepted; whereupon Jacob Call was elected to supply the vacancy.

April 2, 1821.

This being the day fixed by law for the semi-annual meeting of the board, the following members appeared, viz: L. S. Shuler, Samuel T. Scott, Elias McNamee, John D. Hay, Francis Vigo, Jonathan Doty, Jacob Call, Richard M. Janson, and David Hart. The resignation of Mr. Tabbs as a member of the board was received, and accepted. Messrs. John Law and John C. S. Harrison were duly elected members of the board to supply the vacancies occasioned by the death of Charles Smith and the resignation of M. Tabbs.

Monday, April 1, 1822.

This being the day for the semi-annual meeting of the Trustees of the University, the following members appeared: Elias McNamee, president, John D. Hay, Nathaniel Ewing, Jacob Call, Francis Vigo, Robert Buntin, J. C. S. Harrison, and John Law. On motion, the board proceeded to the election of one member to supply the vacancy occasioned by the death of Jonathan Doty; when, on counting the ballots, it appeared that Henry Ruble was duly elected.

Saturday, 20th September, 1823.

The board met pursuant to the advertisement of the president: Present, Elias McNamee, president, Francis Vigo, Robert Buntin, Samuel T. Scott, Nathaniel Ewing, John Law, Richard M. Janson, Ruble, and Blackford. On motion, the board went into the election of two members to supply the vacancies occasioned by the death of *of* David Hart and ; when, on counting the ballots, it appeared that Jacob Kuykendall and were duly elected.

(Samuel Judah, 16.)

Monday, October, 1823.

The board met pursuant to adjournment. Present, Elias M. McNamee, president; Messrs. Call, Ruble, Ewing, Shaw, Shuler, Law, Kuykendall, Blackford. Mr. Shaw resigned his seat as trustee of the seminary; whereupon the board proceeded to an election to supply the vacancy, and, upon counting the ballots, Saml. Judah, esquire, was declared duly elected.

Saturday, 24th April, 1824.

The board met pursuant to notice of the president. Present, Elias McNamee, president; Messrs. Scott, Buntin, Kuykendall, Harrison, Shaw, Janson, Blackford. The board adjourned till the first Tuesday in June next.

(Samuel Judah, 17.)

And afterwards, to wit, "at the term of said Marion circuit court, begun and held at the court-house aforesaid, on Monday, the eighteenth day of October, in the year eighteen hundred and forty-seven, before the honorable the judges above named, and continued from day to day before the same judges, until Monday, the thirteenth day of December, in the year last aforesaid, and forty-eighth judicial day of said term, come the parties by their counsel, and by their agreement the additional deposition of Samuel Judah, taken by consent of parties, and filed at the present term of this court, is now published, and is in the words and figures following, to wit: The deposition of Samuel Judah, taken by consent of parties, and to be read in evidence in a suit in chancery in the Marion circuit court, in which the Trustees for the Vincennes University are plaintiffs, and the State of Indiana is defendant.

Said Samuel Judah, being sworn, says, that the three sheets annexed hereto, and each signed with his signature, are true copies from the regular book of minutes of the trustees of the Vincennes University; that the custody of said book belongs to this deponent as secretary of said trustees, and that it is now in the possession of John B. Martin at Vincennes, one of the said trustees, and the secretary pro tem. of said trustees; that said three sheets were copied by said Martin, and been compared by him and this deponent.

The deponent further says, that from the time of the proceedings set forth in said copy the said trustees have continued to be, and now are, *are* [a] regularly organized body, and that the record of all their proceedings is contained in the said book.

The defendant further says, that some time before October, 1844, the said trustees caused actions of ejectment or disseizin to be instituted in the Gibson circuit court against the occupants thereof under the State for each of the tracts of land in the Gibson seminary township, held under *under* the State; and that after the passage of the act of 1846, authorizing this suit against the State, those suits were dismissed, because, in the opinion of this deponent, as the counsel of the trustees, that dismissal was required in good faith the moment the trustees determined to adopt the remedy given by that act against the State in the place of the suits against the individuals.

SAMUEL JUDAH.

Cross examined by defendant.

1. State whether the records or copies of the proceedings of the complainants, as referred to in the depositions on file, and those referred to in your statement now made, are all the records and proceedings of the complainants of which you have any knowledge. If not, what others do you know of?

2. State under whom the persons in possession of the lands in question claimed to hold title, at the time the suits were brought of which you speak.

3. State who was the first superintendent of the Gibson county seminary lands appointed by the State; in what year he was appointed; how long he served; and whether he is living or dead.

4. State at what time the State first sold these lands, and to what use the proceeds have been set apart or applied by the State.

5. State whether the State university at Bloomington has not been erected by the legislature of the State, and whether these lands, or the proceeds thereof, have not been set apart or appropriated to that institution by the State.

6. State when the college or university at Bloomington was established by the legislature; how it is endowed; and how long it has been in existence as an institution of learning; and state its present condition as an institution of learning.

7. State whether the persons to whom the trustees of the Vincennes University sold the lands they did sell in the Gibson township, did not afterwards apply to Congress to have their titles confirmed, in what year they so applied; and whether Congress did not confirm their titles to those lands.

8. State whether the Vincennes University sold any of the Gibson county lands, except those that were confirmed by Congress; and if so, when, and to whom, and how many acres the complainants did sell, and when, and for how much.

9. State who paid Chancellor Kent for a written opinion on the subject-matter of this suit, and who sought his opinion, and how much he was paid for it.

10. State how much money the Vincennes University received from the sale of lands in Gibson county, and how much from rents of the township in question, and when they received the same.

O. H. SMITH, *for deft.*

And in answer to the cross interrogatories of the defendant's counsel, Mr. Smith, this deponent states, as follows, to the 1st: That the copies referred to as being in the handwriting of Mr. Fauntleroy are, as they are stated in the deposition, copies of the extracts only of the minutes of the trustees; that they are full and complete, and not mutilated in any manner, so far as they go; that they were made for the purpose of showing the organization and continuance of the trustees, and certain petitions, and nothing more, and thereto are complete. The copy referred to in the present deposition of deponent is a full copy of all the proceedings of the meeting stated. There are other proceedings of said trustees set forth in their minute book; that deponent has no remembrance of the contents, the book being now at Vincennes.

2d. It was intended that the suits should be instituted against the persons in possession and claiming under the State; tho' some such

may have been omitted, or some other may have been included, but by mistake.

3d. I think Jesse Emerson was the first superintendent, and appointed under the joint resolution of 1820; but I do not know, and do not believe that Mr. Emerson ever exercised any authority, or did anything as such superintendent. I believe that Mr. Emerson died many years since.

4th. I cannot answer this question any more than the last, from my personal knowledge. I can state my information and belief, as follows: Under the act of 1822 there were three commissioners, Devin, Wilson, and Smith. Devin never acted, and consequently, as the power is plainly joint to the three, there was never any legal action under this law. It is stated by the auditor, in a statement in my possession, that Wilson, Smith, and Neely, under the law of eighteen twenty-seven, (eighteen hundred and twenty-seven,) sold 489 acres for $2,224 80; that statement I annex hereto, signed with my signature, being two sheets, number six and seven. But in the statement from the auditor, filed with the answer, the statement is as follows: "The quantity previously (before 1827) sold by State through Wilson, Neely, and Smith, com'rs, (Oct. 21, 1822,) 569,000 acres." The deponent cannot state which is correct, nor the cause of error; but he does state, that after a careful and repeated examination he has not found any law which appointed, or authorized the appointment of, Neely as a commissioner. The deponent has no information as to the particular tracts of land referred to in either of these statements, nor the occupants thereof, nor the time when actual possession was taken; but does not believe that there was any actual possession until after 1827. The greater portion of the land sold was sold by Smith after the act of 1827. The deponent has the impression that the State at some time recovered, through some agent, $80 or $60 on account of rent; but *but* does not know when, or from whom, or for what tract of land. The deponent believes, without any recollection of the source of his information, that this sum was collected by Smith, as agent under the law of January 31, 1824, and after that time. To the remainder of this question, and to the 4th, and 5th, and 6th, can say nothing more than the general knowledge of every man in the State, the institution of, and appropriations for, and existence of, the State college at Bloomington.

7th. Congress did confirm the sales made by the trustees; but deponent does not know on whose application, nor the reason. It was in 1816.

8th. Deponent does not know nor believe that the trustees sold any other than the confirmed lands.

9th. Chancellor Kent was consulted by order of the trustees, who paid him his fee, one hundred dollars; deponent was consulted and paid the same sum for an opinion by the board, but refused, on his own responsibility, to institute the suit, and suggested that Chancellor Kent or Mr. Wood should be consulted. Deponent, under the direc-

tion of the trustees, prepared the case for Chancellor Kent, and sent it, with the fee, to him.

10th. Deponent has no recollection as to the subjects of this question.

SAMUEL JUDAH.

Sworn and subscribed before the undersigned, the 18th day of November, 1846

WM. SULLIVAN, *J. P.* [SEAL.]

The three sheets or copies of the minutes of the board of trustees, and the statement of the Auditor of State on two sheets, signed by Samuel Judah, and annexed to the deposition of said Judah above recorded, and therein referred to, are in the words and figures following, to wit:

VINCENNES, *June 11th*, 1838.

Pursuant to a call published in the Vincennes Gazette on Saturday last, and signed by R. N. Carnan and George R. Gibson, for a meeting of the trustees of the Vincennes University at the office of Judah and Gibson, on this day, at 10 o'clock, a. m., the following gentlemen appeared: Thomas Alexander, Hiram Decker, Joseph Somers, Alexis LeRoy, Samuel Wise, Robert N. Carnan, Samuel Judah, George R. Gibson, John D. Hay. On motion, ordered, that Robert N. Carnan be appointed chairman pro tem.; and that Samuel Judah be appointed secretary pro tem. And thereupon Mr. Carnan took the chair, and the trustees proceeded to business.

(SAMUEL JUDAH.)

On motion of Doct. Somers, it was ordered, that the trustees now proceed to elect, by ballot, first a president, and then a secretary; and that Messrs. Wise and Decker act as tellers. The trustees proceeded to ballot accordingly, and the tellers reported as follows:

"That the Rev. Thos. Alexander had received seven votes for president, two votes scattering; and that George R. Gibson had received eight votes for secretary, scattering one. Whereupon Mr. Alexander was declared duly elected president, and George R. Gibson secretary, and entered into the discharge of the duties accordingly. On motion of Doct. Decker, it was ordered, that a standing committee of three be appointed, whose duty it shall be to require from the trustees of the borough a full statement of the situation of the commons fund, and contemplated expenditure thereof; to procure, if possible, the old books of this board; to prepare and report all necessary bye-laws, and to act generally as a finance committee; whereupon the president appointed Messrs. Judah, Carnan, and Le Roy to act as said committee.

(SAMUEL JUDAH.)

On motion of Mr. Judah, ordered, that the stated meetings of this board shall be held on the first Mondays of each month at 9 o'clock,

a. m., at the secretary's office, until further ordered. On motion of Mr. Carnan, ordered, that this meeting do now adjourn.

Signed T. ALEXANDER,
President.

GEO. R. GIBSON,
Secretary.

(SAMUEL JUDAH.)

Statement of Auditor.

"The total value of the seminary township, in Gibson county, may be estimated as follows:

The amount received from purchasers as principal from first sale in 1827 to close of 1842 - -	$15,351 90¼
The amount of interest received from purchasers on balance of principal due from 1827 to 1842, inclusive - - - - - - -	8,491 73¼
The amount of rents received previous to sale -	62 00
Total received - - -	23,905 63½
The balance of principal due from purchasers at close of 1842 - - - - - -	7,627 94
The amount sold by the trustees of Vincennes University, being 26 quarter sections, containing 4,166 acres, the amount received from which is unknown. The amount received by Wilson, Neely & Smith, commissioners, under the act of 1827, and accounted for by them to the State treasury, being 489 acres, the principal of which amounted to $2,224 80 cents, and the interest annually paid on the balance by the purchasers, $147 16, making in all - -	2,371 96
	33,905 53½
The value of the 2½ sections, or 1,584.75 acres unsold, up to close of 1842, is estimated by the commissioners not to exceed - - - - -	792 00
Making the total value of the township, exclusive of the 26 quarter sections sold in 1843 for Vincennes University - - - - - - -	$34,697 53

(SAMUEL JUDAH.)

The whole number of acres in the township may be set down as follows, viz:

	Acres.
Quantity sold by act of 1803 for Vincennes University, no record of which is in any of the public offices of the State - - - - - - - -	4,166.00

Quantity sold by Wilson, Neely and Smith, under act of 1827	489.00
Quantity sold by James Smith from 1827 to 1842, inclusive	16,845.95
The quantity remaining unsold, November 1, 1842	1,584.75
Whole number of acres in township	23,085.70

(SAMUEL JUDAH.)

And it is ordered by the court that this cause be, and the same is, referred to William Stewart, master in chancery, to ascertain and report to this court, at its next term, the amount of money received by the State on account of the lands in controversy, and the expenses incurred by the State; the time when received, &c.; and this cause is continued until next term."

And afterwards, to wit, at the term of said Marion circuit court, begun and held at the court-house aforesaid, on Monday, the fifth day of June, in the year of our Lord one thousand eight hundred and forty-eight, before the honorable the judges above named, and continued before the same judges until Wednesday, the seventh day of said month, and third day of said term, come the parties, by their solicitors; and William Stewart, the master in chancery, to whom this suit was referred at last term, makes and files his report herein; and time is given, &c.

Which report, above filed, is in the words and figures following, to wit:

The VINCENNES UNIVERSITY
vs.
The STATE OF INDIANA. } In chancery.

In pursuance of an order made in the above entitled cause, by which it was ordered that it be referred to me, the subscriber, one of the masters of this court, to ascertain and report to this court, at its next term, the amount of money received by the State on account of the land in controversy, the expenses incurred by the State, and the time when received, &c.; I do report the following as the amounts of money received into the State treasury on account of the sale of the land in controversy, the time when received, and the expenses incurred by the State, with the interest on the sums, from the time they were paid into the State treasury to the twentieth day of January, 1848, so far as the same appears from the reports of the commissioners authorized to sell said land, now on file in the office of the auditor of State, and the books of the auditor and treasurer of State.

Time received into State Treasury.	Amount of principal and interest paid into the State treasury.	Commission retained by commissioner	Interest on the amount paid into treasury, to Jan'ry 20 1848.	Interest on the am'nt retained for commiss'n, from time retained to 20th Jan'ry, 1848.
1822. December 3	$421 96	.....	$636 31	.....
1823. December 6	350 00	.....	506 57	.....
1824. November 16	200 00	.....	278 13	.....
1825. January 11	130 00	.....	179 60	.....
" February 12	20 00	.....	27 53	.....
" May 6	100 00	.....	136 23	.....
" November 10	75 00	.....	99 88	.....
" December 5	380 00	.....	504 45	.....
1826. January 6	220 00	.....	290 91	.....
" " 7	380 00	.....	502 42	.....
" " 20	20 00	.....	26 40	.....
1827. November 5	62 00	.....	75 18	.....
Carried over.....	2,358 96	.....	3,263 61	.....
Brought over.....	2,358 96	.....	3,263 61	.....
1827. November 9	90 00	.....	109 07	.....
" December 4	1,814 37	.....	2,190 71	.....
1828. May 14	1,310 00	.....	1,647 11	.....
" September 18	329 82	.....	382 91	.....
" December 4	817 09	.....	937 64	.....
" " 8	196 00	.....	224 81	.....
1829. January 20	400 00	.....	456 00	.....
" May 5	436 00	.....	489 41	.....
" November 2	1,066 29	.....	1,165 34	.....
1830. May 1	571 00	.....	607 07	.....
" August 20	650 00	.....	679 25	.....
" November 28	270 00	.....	277 74	.....
" December 13	400 00	.....	410 47	.....
1831. January 15	100 00	.....	102 09	.....
" May 15	715 00	.....	715 60	.....
" November 26	660 00	.....	639 54	.....
1832. December 1	305 00	.....	276 99	.....
1833. December 1	175 00	.....	148 43	.....
" July 15	400 00	.....	348 33	.....
" November 15	549 00	.....	467 11	.....
" " 26	525 00	.....	445 73	.....
1834. August 15	496 00	$370 15	399 69	$298 16
" " -	162 56	.....	131 36	.....
1835. January 15	1,820 00	.....	1,421 12	.....
" " -	175 00	.....	136 65	.....
" April 15	58 32	.....	43 66	.....
Carried over.....	16,850 42	370 15	18,117 44	298 16
Brought over.....	16,850 42	370 15	18,117 44	298 16
1835. May 15	600 00	.....	456 50	.....
" " 20	1,610 33	.....	1,223 60	.....
" November 30	220 84	134 53	160 96	98 33
1836. October 10	1,646 74	.....	1,114 48	.....
1837. November 12	175 00	41 39	106 98	25 06
" " 15	458 00	30 26	279 76	18 33
1838. December 30	500 00	16 96	271 67	9 24
1839. December 1	800 00	24 76	390 67	12 21

Amounts—Continued.

Time received into State Treasury.			Amount of principal and interest paid into the State trreasury.	Commission retained by commissioner	Interest on the amount paid into treasury, to Jan'ry 20, 1848.	Interest on the am'nt retained for commiss'n, from time retained to 20th Jan'ry, 1848.
1840.	December	20	$1,336 52	$80 42¾	$568 23	$34 00
"	"	15	666 66	42 00	284 03	17 89
1842.	December	5	500 00	.....	163 75	.....
1843.	January	27	220 00	.....	65 74	.....
"	February	8	216 00	.....	64 15	.....
"	May	11	100 00	.....	28 15	.....
1844.	May	15	300 16	33 66	66 25	6 51
"	November	6	310 00	.....	59 62	.....
"	"	30	566 44	.....	106 60	.....
"	"	12	332 64	37 46	63 71	7 08
1845.	November	20	1,154 84	48 11	150 15	6 24
1846.	November	20	653 19	27 22	45 71	1 89
1847.	December	3	882 18	33 28	6 91	0 26
Total amount....			$30.099 96	$920 20¾	$23.795 06	$715 20

And further, I do report the following as the number of acres of the land in controversy sold, the time when sold, and the amount of purchase money, with the interest on the same from the time sold to the twentieth day of January, A. D. 1848, so far as the same appears from the reports of the commissioners authorized to sell said lands, now on file in the office of the auditor of State and the books of auditor and treasurer of State:

Date of sale.	Number of acres of land sold.	Amount for which the land sold.	Interest on purchase money from time sold to 20th Jan., 1848.
1822, Oct. 23	489 00	$2,624 00	$3,977 05
1827, Sept. 8	3,923 17	7,074 76½	8,645 65
1828, May 6	2,498 86	4,630 23½	5,451 05
" Aug. 5	478 50	800 35	934 00
" Oct. 7	320 00	480 00	555 44
" Dec. 29	1,133 27	1,586 59½	1,814 73
1829, Nov. 11	1,360 00	1,780 00	1,942 87
1830, Oct. 14	1,860 93	2,346 49¾	2,430 46
1831, Nov. 9	1,205 63	1,128 22¾	1,096 23
1832, Dec. 6	877 64	658 22½	597 03
1833, April 29	400 00	300 00	265 05
1834, Sept. 15	240 00	130 00	144 15
1835, Dec. 20	791 95	594 71¾	431 38
1836, Dec. 30	1,035 00	776 25	514 75
1837, Sept. 1	320 00	240 00	149 56
1839, Aug. 5	160 00	120 00	60 90
1840, June 1	160 00	120 00	54 98
1841, Oct. 27	80 00	60 00	22 43
Total amount,	17,333 95	25,499 85	29,087 71

WILSON, NEELY & SMITH, *Com'rs.*

Time received into State Treasury.	Amount of principal and interest paid into the State treasury.	Commission retained by commissioner	Interest on the amount paid into treasury, to Jan'ry 20 1848.	Interest on the am'nt retained for commiss'n, from time retained to 20th Jan'ry, 1848.
1822. December 3	$421 96	.....	$636 31	.....
1823. December 6	350 00	.....	506 57	.....
1824. November 16	200 00	.....	278 13	.....
1825. January 11	130 00	.....	179 60	.....
" February 12	20 00	.....	27 53	.....
" May 6	100 00	.....	136 23	.....
" November 10	75 00	.....	99 88	.....
" December 5	380 00	.....	504 45	.....
1826. January 6	220 00	.....	290 91	.....
" " 7	380 00	.....	502 42	.....
" " 20	20 00	.....	26 40	.....
1827. November 5	62 00	.....	75 18	.....
Carried over.....	2,358 96	.....	3,263 61	.....
Brought over.....	2,358 96	.....	3,263 61	.....
1827. November 9	90 00	.....	109 07	.....
" December 4	1,814 37	.....	2,190 71	.....
1828. May 14	1,310 00	.....	1,647 11	.....
" September 18	329 82	.....	382 91	.....
" December 4	817 09	.....	937 64	.....
" " 8	196 00	.....	224 81	.....
1829. January 20	400 00	.....	456 00	.....
" May 5	436 00	.....	489 41	.....
" November 2	1,066 29	.....	1,165 34	.....
1830. May 1	571 00	.....	607 07	.....
" August 20	650 00	.....	679 25	.....
" November 28	270 00	.....	277 74	.....
" December 13	400 00	.....	410 47	.....
1831. January 15	100 00	.....	102 09	.....
" May 15	715 00	.....	715 60	.....
" November 26	660 00	.....	639 54	.....
1832. December 1	305 00	.....	276 99	.....
1833. December 1	175 00	.....	148 43	.....
" July 15	400 00	.....	348 33	.....
" November 15	549 00	.....	467 11	.....
" " 26	525 00	.....	445 73	.....
1834. August 15	496 00	$370 15	399 69	$298 16
" " -	162 56	.....	131 36	.....
1835. January 15	1,820 00	.....	1,421 12	.....
" " -	175 00	.....	136 65	.....
" April 15	58 32	.....	43 66	.....
Carried over.....	16,850 42	370 15	18,117 44	298 16
Brought over.....	16,850 42	370 15	18,117 44	298 16
1835. May 15	600 00	.....	456 50	.....
" " 20	1,610 33	.....	1,223 60	.....
" November 30	220 84	134 53	160 96	98 33
1836. October 10	1,646 74	.....	1,114 48	.....
1837. November 12	175 00	41 39	106 98	25 06
" " 15	458 00	30 26	279 76	18 33
1838. December 30	500 00	16 96	271 67	9 24
1839. December 1	800 00	24 76	390 67	12 21

Amounts—Continued.

Time received into State Treasury.			Amount of principal and interest paid into the State trreasury.	Commission retained by commissioner	Interest on the amount paid into treasury, to Jan'ry 20, 1848.	Interest on the am'nt retained for commiss'n, from time retained to 20th Jan'ry, 1848.
1840.	December	20	$1,336 52	$80 42¾	$568 23	$34 00
"	"	15	666 66	42 00	284 03	17 89
1842.	December	5	500 00	.....	163 75	.....
1843.	January	27	220 00	.....	65 74	.....
"	February	8	216 00	.....	64 15	.....
"	May	11	100 00	.....	28 15	.....
1844.	May	15	300 16	33 66	66 25	6 51
"	November	6	310 00	.....	59 62	.....
"	"	30	566 44	.....	106 60	.....
"	"	12	332 64	37 46	63 71	7 08
1845.	November	20	1,154 84	48 11	150 15	6 24
1846.	November	20	653 19	27 22	45 71	1 89
1847.	December	3	882 18	33 28	6 91	0 26
Total amount....			$30.099 96	$920 20¾	$23.795 06	$715 20

And further, I do report the following as the number of acres of the land in controversy sold, the time when sold, and the amount of purchase money, with the interest on the same from the time sold to the twentieth day of January, A. D. 1848, so far as the same appears from the reports of the commissioners authorized to sell said lands, now on file in the office of the auditor of State and the books of auditor and treasurer of State:

Date of sale.	Number of acres of land sold.	Amount for which the land sold.	Interest on purchase money from time sold to 20th Jan., 1848.
1822, Oct. 23	489 00	$2,624 00	$3,977 05
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1830, Oct. 14	1,860 93	2,346 49¾	2,430 46
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1837, Sept. 1	320 00	240 00	149 56
1839, Aug. 5	160 00	120 00	60 90
1840, June 1	160 00	120 00	54 98
1841, Oct. 27	80 00	60 00	22 43
Total amount,	17,333 95	25,499 85	29,087 71

WILSON, NEELY & SMITH, *Com'rs.*

And further, I do report the following as the amount of purchase money due on the 3d of December, A. D. 1847, so far as the same appears from the reports of the commissioners authorized to sell said land, now on file in the office of the auditor of State, and the books of said office:

Balance of purchase money this day due, per auditor's register.

		Purchase money due and unpaid.
1841, Nov. 20.	1841, Nov. 20 - - -	$16,106 42¼
Add for correction in same book, page 10	- -	255 00
		$16,361 42¼

From this deduct these sums, paid into the treasury since, according to the auditor's books:			
In 1842 - - - - -	$532 00		
" 1843 - - - - -	418 60		
" 1844 - - - - -	590 00		
" 1845 - - - - -	780 00		
" 1846 - - - - -	259 50		
" 1847 - - - - -	532 13		
		3,112 23	
Total amount of principal due, Dec. 3, 1847,			$13,249 19¼

Recapitulation.

Whole number of acres sold by the State	17,333.95
Amount of purchase money - - - - -	$25,496 85
Interest on the purchase money from the time the lands were sold to the 20th day of January, 1848 - -	29,087 71
Total amount of principal and interest paid into the State treasury to Dec. 3, 1847 - - - -	30,099 96
Interest on the same from the times paid into the State treasury to 20th January, 1848 - -	23,795 06
Amount retained by commissioner for services rendered selling the land - - - - -	920 20¾
Interest on the same from time retained to 20th of January, 1848 - - - - - -	715 20
Amount of purchase money remaining unpaid on December 3d, 1847 - - - - -	13,249 19¼

I have endeavored to make the foregoing report correct, to the best of my abilities and judgment, so far as I could obtain information on the subject from the numerous reports of the commissioner authorized to sell the land, and the books of the auditor and treasurer of State. The precise time the several amounts of money were paid into the State treasury could not be ascertained, because frequently there was

no date specified when the money was received into the treasury. All of which is respectfully submitted.

WILLIAM STEWART,
Master in chancery.

Indianapolis, June 1, 1848.

And afterwards, to wit, on Saturday, the tenth day of said month of June, in the year eighteen hundred and forty-eight, and the sixth judicial day of said last named term of said Marion circuit court, before the judges aforesaid, come the parties, by their solicitors, and the defendants except, generally to the report of the master filed herein; and time is given, &c.

And afterwards, to wit, "on Saturday, the first day of July, in the year last aforesaid, and twenty-fourth judicial day of said term, on motion to the court, it is ordered, that William Stewart, master in chancery, be allowed one hundred dollars for his services, to be taxed as costs herein, and this cause is continued."

And afterwards, to wit, at the term of said Marion circuit court, begun and held at the court-house, in the city of Indianapolis aforesaid, on Monday, the second day of October, in the year eighteen hundred and forty-eight, before the honorable the judges above named, and continued from day to day before the same judges, until Saturday, the twenty-eighth day of said month, and 24th judicial day of said term, this cause is continued by order of the court under a general order of continuance until next term.

And afterwards, to wit, at the term of said court, begun and held at the court-house aforesaid, on Monday, the thirtieth day of April, in the year of our Lord one thousand eight hundred and forty-nine, before the honorable the judges above named, and continued from day to day before the same judges, until Monday, the twenty-first day of May, in the year last aforesaid, and nineteenth judicial day of said term, come the parties, by their solicitors, and the court being fully advised of and concerning the premises, do order, adjudge, and decree, that the complainants, the Trustees for the Vincennes University, had and have the right to the township of land in Gibson county, known as township number two south, in range number eleven west.

And whereas, by an act of the general assembly of the State of Indiana, approved January 17, 1846, entitled "an act to authorize the Trustees of the Vincennes University to bring suit against the State of Indiana, and for other purposes." And by the fourth section thereof it is enacted as follows:

"That if, upon a final hearing of the said suit, the same shall be decided in favor of said Board of Trustees for the Vincennes University, upon said board of trustees relinquishing to the State, for the use and benefit of the purchasers thereof, so much of the said township of land," (being the said township in Gibson county,) "as the State hath sold, then and in that case there shall be set apart to said board of trustees

the funds arising from the sale of the said township of lands, as also the amount yet due from the respective purchasers thereof."

And whereas, by the report, of the master in chancery, heretofore made in this case, it appears that the funds arising from the sale of the said township of lands, are as follows, to wit:

The amount of principal and interest paid into the State treasury to December 3, 1847, is thirty thousand and ninety-nine dollars and ninety-six cents.

And whereas, by the same report, it appears further, that on the said third day of December, 1847, there was due from purchasers of said lands for the purchase money thereof, the sum of thirteen thousand two hundred and forty-nine dollars [and] nineteen cents. And whereas it further appears, by the said report, that of the said sum of $30,099 96, the proceeds aforesaid, the sum of $259 50 collected as for 1846, and the sum of $532 13 collected as for 1847, and making together the sum of $791 63 was not paid into the said treasury until the 3d day of December, 1847, and thus making the sum paid into said treasury upon the commencement of this suit, to wit, the 4th day of May, 1846, to be the sum of $29,308 33.

And it appears to the satisfaction of the court, that the complainants are entitled to interest on the said sum of $29,308 33, parcel of said sum of $30,099 96, from the commencement of this suit, to wit, the 4th day of May, 1846, and on the said sum of $791 63 from the said third day of December, 1847, and that the said interest now amounts to the following sum, to wit:

Interest on $29,308 33 from the 4th May, 1846, to the 21st day of May, 1849, 3 years 17 days - - -	$5,359 51
Interest on $791 63 from 3d December, 1847, to the 21st day of May, 1849, 1 year 5 months 16 days - -	69 36
Making together, at the rate of six per cent., the sum of	$5,428 87

Therefore, it is further ordered, adjudged, and decreed by the court, that on compliance with the terms of the said act of the legislature, that is to say, so soon as the complainants shall file in the office of the auditor of State a relinquishment under their common seal to the State of Indiana, for the use of the purchasers from the said State of the lands in the said township, of and for all the right of the complainants of, in, and to the lands so sold, then the said sum of $30,099 96, so paid into the Treasury as aforesaid, shall be forthwith set apart by the auditor of State and treasurer of State, and, with all interest which from the date of this decree may accrue thereon, shall by the said officers be paid to the complainants. And then, also, the said officers shall transfer to the complainants the evidences or securities for the said sum of $13,249 19, due, as aforesaid, on the 3d day of December, 1847; or if any part thereof, or any interest thereon shall have been paid into the said treasury since the said 3d day of December, 1847, the said officers shall pay over the said money, and transfer the balance as aforesaid.

And it is further ordered, adjudged, and decreed, that on filing the relinquishment aforesaid the complainants are entitled to receive, and receive from the said State, the amount of interest aforesaid, to wit, the sum of $5,428 87, with interest thereon from this date until paid, to be paid in such manner as by law may be provided.

And it is further ordered, that the complainants ought to have from the said State their costs in this behalf expended, amounting to the sum of to be paid in such manner as by law may be provided. And this cause is continued to the next term for further directions.

And thereupon, the State of Indiana, by her counsel, prays an appeal from the above decision and decree to the Supreme Court; which motion is sustained by the court, and the appeal is granted accordingly.

THE STATE OF INDIANA,
Marion county, sct:

I, Robert B. Duncan, clerk of the Marion circuit court, do hereby certify, that the foregoing record, contained on sixty pages, is a full, true, and complete transcript of the record of the proceedings and decree of said court, in the case of the Trustees of the Vincennes University against the State of Indiana, therein set forth.

In witness of which I hereunto affix the seal of said court, and subscribe my name, at Indianapolis, this 30th day of May, A. D. [SEAL.] 1849.

R. B. DUNCAN, *Clerk.*

The STATE of INDIANA
vs.
The TRUSTEES of the Vincennes University.

In error to the Marion circuit court.

The plaintiff comes and says there is error in the record and proceedings aforesaid, in this, to wit, that the court below rendered a decree in favor of said Trustees of the Vincennes University, and against said State, when, by the law of the land, the decree should have been rendered in favor of said State, and against the said Trustees. Wherefore, for said cause, and for divers other errors in said record, said State insists that said decree be reversed, &c , &c.

O. H. SMITH & GEO. G. DUNN,
For the State.

And afterwards, to wit, on the twelfth day of June, in the year eighteen hundred and forty-nine, come the defendants, by Samuel Judah, esq., their attorney, and file in said clerk's office of the supreme court their joinder in error, which is in the words and figures following, to wit:

And the said trustees, by Judah, their attorney, say, there is no error

in said proceedings as above stated; but that there is error in this, that the said circuit court refused to allow to the said trustees interest on the said sum of $29,308 33, from the time the several sums of money composing that sum were paid into the treasury; and also because the said circuit court refused to allow to the said trustees interest on the said money from the time of demand of the same from the legislature, to wit, the day of 184 ; and also for that said court refused to allow to said trustees the sum of $920 20, retained by the officers, and $715 20, the interest thereon; and this, &c., wherefore, &c.

SAM'L JUDAH,
For def'ts in error.

And afterwards, to wit, at a term of said supreme court, begun and holden on the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and forty-nine, and continued from day to day till the twelfth day of June, and year last aforesaid, at which time come the parties by their counsel, and the assignment of errors and answer thereto having been filed, submit this cause to the court without argument; but the court not being sufficiently advised of the premises, take time to advise thereon.

And afterwards, to wit, at a court begun and holden as last aforesaid, and continued from day to day till the twenty-fourth day of November, and year last aforesaid, at which time come the parties, by their counsel; and the court not yet being sufficiently advised of the premises, take time till the next term to advise thereon.

And afterwards, to wit, at a court begun and holden on the twenty-sixth of November, A. D. 1849, and continued from day to day till the twenty-fifth day of May, A. D. 1850, at which time come the parties by their counsel; and the court not being sufficiently advised of the premises, take time till the next term to advise thereon.

And afterwards, to wit, at a court begun and holden on the twenty-seventh day of May, A. D. 1850, and continued from day to day till the twenty-third day of November, A. D. 1850, at which time come the parties, by their counsel; and the court not yet being sufficiently advised of the premises, take time till the next term to advise thereon.

And afterwards, to wit, at a court begun and holden on the twenty-fifth day of November, A. D. 1850, and continued from day to day till the twenty-seventh day of November, and year last aforesaid, at which time come the parties by their counsel; and the court being sufficiently advised of the premises, give the following opinion and judgment, pronounced by Judge Smith.

By an act of the general assembly, passed in 1846, the Trustees of the Vincennes University were authorized to file a bill in chancery, in the nature of an action of disseizin, for the purpose of trying their right to the township of said land in Gibson county, called the Seminary township. A bill was accordingly filed in the Marion circuit court, claiming that said trustees were entitled to the use of said lands, of which they had been wrongfully dispossessed by the State. The cause

was heard upon the bill, answer, and depositions, and the circuit court rendered a decree in favor of the complainants, requiring the State to pay to them 30,099 dollars and 96 cents, being the proceeds of a portion of the lands in said township, sold by authority of several acts of the legislature, which proceeds were paid in the State treasury for the use of the Indiana University, a State institution of learning, located at Bloomington. From this decree the present writ of error was prosecuted.

The material facts upon which the right of the complainants to have a decree to this effect, must depend, may be stated as follows:

An act of Congress of March 26th, 1804, (U. S. stat. at large, vol. 2, p. 277,) entitled "an act making provision for the disposal of the public lands in the Indiana territory, and for other purposes," established three land districts, namely, the districts of Detroit, Kaskaskia, and Vincennes. It directed the survey and sale of the lands in those districts, to which the Government then had title, with certain exceptions. The fifth section enacts, that all the lands aforesaid, not excepted by virtue of the preceding section, (referring to exceptions made of lands claimed under French and English grants,) shall, with the exception of the section numbered sixteen, which shall be reserved in each township for the support of schools within the same, with the exception, also, of an entire township in each of the three above described tracts of country or districts, to be located by the Secretary of the Treasury for the use of a seminary of learning; and with the exception, also, of the salt springs and lands reserved for the use of the same, as hereinafter directed, be offered for sale to the highest bidder," &c.

Afterwards, on the tenth of October, 1806, Albert Gallatin, the Secretary of the Treasury, located the township number two south, range eleven west, now in Gibson county, for the use of a seminary of learning under the above mentioned act. This location was made by a letter addressed to the register of the land office of Vincennes, as follows:

SIR: In conformity with the provisions of the fifth section of the act making provision for the disposal of the public lands in the Indiana territory, and for other purposes, I do hereby locate, for the use of a seminary of learning, the township No. two south, of the base line in the eleventh range west, of the Vincennes district, being the same which is recommended for that purpose in your and the receiver's joint letter of the 12th ulto. You will please to enter the location accordingly in your book of entries, in order that the same may be matter of record."

In 1806 an act was passed by the legislature of the Indiana territory incorporating an university. The second section of this act is as follows:

"And whereas Congress has appropriated a township of land of 23,040 acres for the use and support of the university or a public school in the district of Vincennes; and whereas the township is now located, and the boundaries designated; be it, therefore, enacted, that the trustees, in their corporate capacity, or a majority of them, be, and they

are hereafter authorized to sell, transfer, convey, and dispose of any quantity, not exceeding four thousand acres, of said land, for the purpose of putting into immediate operation the said institution or university, and to lease or rent the remaining part of the said township to the best advantage for the use of the said public school or university."

By virtue of the authority given by this act the Trustees of the Vincennes University sold about 4000 acres of said land.

On the 19th of April, 1806, the act to provide for the admission of the State of Indiana into the Union was passed by Congress. It contained, among others, the following propositions, which, when accepted by the convention assembled to form a State constitution, were to be obligatory on the United States; and they were so accepted.

That the section numbered sixteen, in every township, should be granted to the inhabitants of such township for the use of schools.

That all salt springs within the territory, and the land reserved for the use of the same, should be granted to the State, for the use of the people of the State, to be used as the legislature of the State should direct.

"That one entire township, which shall be designated by the President of the United States, in addition to the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said State, to be appropriated solely to the use of such seminary by the said legislature."

On the 27th of April, 1816, an act was passed by Congress, which reads as follows:

Be it enacted, &c., "That the several persons who purchased lands in township numbered two south, of range eleven west, in the district of Vincennes, from the board of trustees of the Vincennes University, which was incorporated by an act of the legislature of the Indiana territory, entitled 'An act to incorporate an university in the Indiana territory, passed the twenty-ninth of November, 1806, be, and they are hereby, confirmed in their titles in fee simple respectively.'" United States statutes at large, vol. 6, private laws, 171.

The act establishing a State seminary at Bloomington, was passed on the 20th of January, 1820, by the general assembly. In this act the seminary township, in Gibson county, is not mentioned; but on the 22d of January, at the same session, a joint resolution was adopted, appointing one Jesse Emmerson a superintendent to rent the improved lands in that township, and directing him to account to the State for the proceeds.

On the 22d of January, 1822, an act was passed by the legislature of the State, entitled "An act to provide for the sale of the seminary township in Gibson county," &c. The first section of this act appoints commissioners to make sale of the lands in that township. The fourth section requires the money to be paid into the State treasury, "that it may be made a productive fund for the benefit of the State seminary." The seventh section is as follows:

"Whereas it is stated to this general assembly that the former Board

of Trustees of the Vincennes University sold certain quarter sections of the seminary township without making and executing deeds therefor, and that the said board had expired by the negligence of its members; for remedy whereof the said commissioners, or a majority of them, shall, and they are hereby authorized and directed, to hear the claims, receive evidence, and decide on the said sales and purchases; and when to make them it may seem just and right, to make and execute deed or deeds of conveyance to the purchaser, or purchasers, of any one or more quarter section or sections of land in the said seminary township, so purchased as aforesaid, under the provisions of the act of the general assembly authorizing the said board of trustees to sell and dispose of part of the said seminary township of land."

On the 25th of January, 1827, another act was passed by the legislature of the State, appointing commissioners to make sale of the lands in both the Gibson and Monroe townships, and they were required to pay the proceeds to the State treasurer.

By virtue of these acts, about 17,000 acres of the land in the Gibson township were sold by the commissioners, and the proceeds, with the interest thereon, amounting to the sum mentioned in the decree, were paid into the State treasury for the use of the Indiana University.

Accompanying the depositions there is a paper containing what are called "extracts and copies," taken from a book having on its first page the title, "Minutes and proceedings of the board of trustees for Vincennes University, Indiana."

They were introduced for the purpose of showing the organization and continuance of the board of trustees, and that certain petitions were prepared by the board to Congress, with the view of obtaining authority to sell the lands remaining unsold in the Gibson township.

By these minutes it appears that the board was organized by the election of officers in December, 1806, and held meetings one or more times during almost every year, until April, 1824.

At the meeting of November, 1817, a petition appears to have been prepared and signed by the board, asking Congress for authority to sell the remainder of the land in said township, for the purpose of vesting the proceeds in stocks for the use of their institution. The petition states that the sum realized by the sale of 4,000 acres had been expended in the erection of a building suitable for a public school; but that, having no other means than the prices of tuition for the support of teachers, they had been able to open a grammar school only. The petition also stated that but few leases had been taken; and believing, from the newness of the country, &c., the arrangement likely to prove unproductive, they had, for the present, abandoned the measure.

It seems that this petition was referred to a committee of the Senate of the United States, who reported unfavorably to the object of the petitioners, on the ground that it was inexpedient to authorize the land to be sold at that time. The report does not go into any examination of the rights of the petitioners under the laws passed upon the subject.

See the report of Mr. Morrow in the American State Papers, public lands, vol. 3, p. 266.

At a meeting of the board of trustees, in December, 1818, a second petition for authority to sell lands was prepared, and ordered to be forwarded to the representatives of this State in Congress; but with what result does not appear.

A second extract from the book of the trustees shows that, in June, 1838, pursuant to a call published in the Vincennes Gazette, the trustees met and proceeded to organize the board by the election of officers. At this meeting a standing committee of three was appointed to require from the trustees of the borough a statement of the situation of the commons fund and contemplated expenditure thereof; to procure, if possible, the old books of the board; to prepare and report all necessary by-laws, and to act generally as a finance committee.

In the year 1844, the said trustees caused actions of ejectment or disseizin to be instituted in the Gibson circuit court against the occupants of said lands sold by the State; which actions were dismissed af- the passage of the act authorizing them to sue the State; that act making provision that the State should be considered as standing in the place of those occupants.

The above statement, it is believed, contains all the facts shown by the bill, answer, and depositions, with the various acts referred to, which can have any bearing upon the decision of the questions involved in this controversy.

The first question which presents itself is, whether the act of Congress of 1804 and the act of the territorial legislature in 1806, conferred any right to the land in controversy on the complainants; for upon these acts their whole claim rests.

The purpose of the act of 1804 was to provide for the sale of the public lands in the districts of Vincennes, Detroit, and Kaskaskia. It accordingly directs the sale of all the lands in those districts, except certain specified parts thereof. This act, of itself, certainly conferred no rights upon the complainants at the time it was passed. They were not then in existence as a corporation; but, even if they had been, there is nothing to designate them as the persons for whose use the land thus reserved from sale was intended. The reservation of the township of land now in controversy from sale by this act, cannot operate as a grant of it to any person, sole or corporate, for the simple reason that no such person is named as grantee.

It is contended by the counsel for the appellees that there are exceptions to the general rule—that there can be no grant unless there is a grantee in being; and several cases are cited in support of this position. They are cases of dedication of property to public uses, and we have no disposition to question the correctness of the doctrines held on that subject; but we think they are not applicable in considering the effect of this act.

The immediate effect of the act of 1804 was to cause one township in each of the three land districts to be reserved from sale; and it

further points out a purpose for which they were so reserved, namely, they were intended to be appropriated to the use of a seminary of learning. But what seminary of learning? None is specified. There is nothing to indicate whether the three townships in the three land districts were intended for the use of one seminary, or one in each district; nor, indeed, is there the slightest intimation given as to what seminary was intended. No doubt there existed then, and since, in the United States, numerous seminaries of learning, any one of which might, with equal reason, have claimed to be the seminary for the use of which these townships of land were reserved. Common sense would seem sufficient to determine that a grant cannot be operative unless there is some means of ascertaining in whom the rights granted are intended to vest.

We think, therefore, that the only reasonable construction which can be given to this act is, that Congress intended by it, in authorizing the sale of a large quantity of public lands, to reserve certain portions, with the intention of thereafter appropriating those portions to the purposes specified; that is, in the cases of the township reserved in each land district, Congress intended to appropriate them to the use of such seminary or seminaries of learning as it should afterwards name or designate.

If the words used could be construed to operate as a dedication of these lands to public uses, or to the public, to be applied by the public authorities to the use of some one or more seminaries of learning, the result would be the same, so far as regards the question we have now to consider; for as there is nothing indicating an intention to give them exclusively to the people of the Indiana territory, or of the land districts in which they are situated, for that purpose, the dedication would be to the inhabitants of the Union, and the power to make the application would still remain in Congress. The sections numbered sixteen in each township are declared to be reserved for the support of schools within the same; but no one has ever supposed that this reservation of a section in each township, though accompanied by the express declaration that it was to be for the use of schools in the township in which it is situated, was intended to give the inhabitants of the townships, respectively, the exclusive right to appropriate the reserved sections to the support of such schools as they should think proper.

The next material step taken, after the passage of the act of 1804, was the location of the township reserved in the Vincennes district by the Secretary of the Treasury. It is not contended that this officer had any power to designate the seminary for the use of which the land was reserved from sale, nor did he attempt to do so. His location, therefore, served merely to designate the particular township reserved from sale.

After the passage of the act of 1804, and the subsequent location, the title to the lands in controversy, and the power to appropriate them to the use of "a seminary of learning," remained in Congress. This power could be exercised, no doubt, either directly by an act granting

See the report of Mr. Morrow in the American State Papers, public lands, vol. 3, p. 266.

At a meeting of the board of trustees, in December, 1818, a second petition for authority to sell lands was prepared, and ordered to be forwarded to the representatives of this State in Congress; but with what result does not appear.

A second extract from the book of the trustees shows that, in June, 1838, pursuant to a call published in the Vincennes Gazette, the trustees met and proceeded to organize the board by the election of officers. At this meeting a standing committee of three was appointed to require from the trustees of the borough a statement of the situation of the commons fund and contemplated expenditure thereof; to procure, if possible, the old books of the board; to prepare and report all necessary by-laws, and to act generally as a finance committee.

In the year 1844, the said trustees caused actions of ejectment or disseizin to be instituted in the Gibson circuit court against the occupants of said lands sold by the State; which actions were dismissed after the passage of the act authorizing them to sue the State; that act making provision that the State should be considered as standing in the place of those occupants.

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the use of the lands to a seminary of learning, or indirectly by lodging a power elsewhere to do so. But no rights were conferred upon the Trustees of the Vincennes University, nor was any power given by this act to the territorial legislature to grant the use of these lands to them; and therefore, unless that body derived a competent authority to do so from some other source, its act of November, 1806, so far as respects such a grant, must be considered altogether nugatory.

It is not pretended that the territorial legislature had any power to grant the use of these lands to the complainants, except such as was derived from the act of Congress just mentioned, and the general powers conferred upon it by the acts organizing the territorial government. The act of May 7, 1800, which was then in force, gave to the Indiana territory, which comprised all the territory of the United States northwest of the Ohio river, which was westward of a line beginning at the Ohio, opposite the mouth of the Kentucky river, running thence to fort Recovery, and thence north until it intersected the line between the United States and Canada, a territorial government in all respects similar to that provided by the ordnance of 1787. Authority was given to the legislature to make laws in all cases for the good government of the district, not repugnant to the principles and articles in the ordinance established and declared. The third article of the ordinance declares that "religion, morality, and knowledge being necessary for good government and the happiness of mankind, schools and the means of education shall forever be encouraged." The fourth article, after making certain provisions relative to the territorial districts, and the new States thereafter to be formed within them, provides that "the legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States. Nothing further can be found in the ordinance, or in the subsequent acts of Congress establishing the territorial government, which has the least appearance of conferring a power on the territorial legislature to grant the use of the lands in controversy to the complainants; and we think it can scarcely be seriously contended that such power was given by these provisions. We are certainly strengthened in our opinion that the conclusions we have come to, as to the effect of the act of 1804, are correct, by the fact that they coincide with what appears to have been the constant understanding both of Congress and the State legislature.

In March, 1805, an act was passed by Congress, supplementary to the act of 1804, providing for the survey of certain lands not included in the provisions of the act first passed. The seventh section of this act is as follows:

"That all the sections heretofore reserved for the future disposition of Congress, and lying within either of the districts established for the disposal of public lands in the State of Ohio, with the exception of the sections numbered sixteen, of the salt springs, and the lands reserved for the use of the same, and of the other sections or tracts of land heretofore specifically appropriated, shall be offered for sale in

that district within which such reserved sections may lie, on the same terms, and under the same regulations, as other lands in the same district."

It would seem from this act that Congress considered that the sections numbered sixteen, and the other reservations mentioned, were reserved for its future disposition, or it would have been unnecessary to except them from the general operation of the act.

So in 1816 by compact with the State, Congress granted the sections numbered sixteen to the inhabitants of the townships in which they are situated, and vested the title of the salt lands, and of one township in addition to the one before reserved, in the State, on certain specified conditions. This compact was, doubtless, made by Congress with the view of carrying out the original intentions with which these lands were reserved; but it does not the less show that further action on the part of Congress was deemed necessary to effect a grant of the lands for the purposes intended.

It is indeed contended by the counsel for the complainants that it was not intended by the act of 1816 to vest the township originally reserved in the State, and that the words "in addition to the one heretofore reserved for that purpose" are merely explanatory. We think the fourth clause, especially when considered in connexion with the other parts of the section, should be construed differently; but even such a construction would not enable the complainants to show any title in themselves.

The act of the State legislature establishing a State seminary was passed in 1820, and at the same session a joint resolution was adopted, appointing a superintendent to take possession of and lease the lands in controversy. In 1822 and in 1827 acts were passed directing their sale, and they were accordingly sold by the State. A small portion appears to have been sold under the act of 1822, but the largest portion, indeed almost the whole, of the lands in question were sold under the act of 1827. These acts certainly do not indicate that the legislature of that period had any doubt of the right of the State to take possession of these lands, and direct the application of the proceeds under the act of Congress of 1816.

It is contended by the complainant that the action of Congress on their petition for authority to sell these lands, and the passage of the act confirming the titles of the purchasers of the 4,000 acres sold, affords proof that Congress recognised the validity of their claim under the grant of the territorial legislature. We think these acts have no important bearing on the case. The act confirming the title of the purchaser serves rather to show that their titles under the sale by them to the complainants was not considered valid.

The complainants also insist, that as no steps were taken by the State to dispose of the township in Gibson county until 1820, though some acts relative to the township in Monroe county had been previously passed, the inference should be drawn, that the legislature of the State did not, prior to the year 1820, understand the act of Congress of 1816,

as vesting the right to the township in Gibson county in the State. They say, that the usurpation of the State is founded on a false recital in the seventh section of the act of January 22d, 1822, namely, that "the said board had expired by the negligence of its members." But that recital refers only to sales said to have been previously made by the board without executing deeds to the purchasers; and the whole purpose of the section was to provide that deeds should be made to claimants under such sales, when, upon the evidence adduced, the commissioners should deem it just and right that such deeds should be made. The State had provided for taking possession of the land two years before by joint resolution appointing Emmerson superintendent.

We do not think any reference unfavorable to the right of the State can be justly drawn from these facts; while, on the other hand, though it must have been notorious that the State did, under the several acts mentioned, commencing in 1820, take possession of and sell the land, no hostile claim appears to have been set up by the complainants from that period until actions of ejectment were commenced against the occupants holding under the State in 1844. Their silence, for a period of nearly twenty-four years, under what they now term a wrongful usurpation by the State, when so large an amount of property was involved, affords, certainly, some reason to suppose that they had not any very great confidence in the validity of their claim. The counsel for the State has, indeed, endeavored to take advantage of this inaction of the complainants by pleading the statute of limitations as a bar to the suit, but we have not deemed it necessary to inquire into the sufficiency of that plea, as we have arrived at the conclusion that the suit is not sustainable, for the reason that it is not shown that the complainants ever had any valid title to the possession of the lands claimed by them.

The decree of the circuit court must therefore be reversed; and, in accordance with the usual practice in chancery cases, the cause will be remanded to that court, with directions to dismiss the bill.

It is therefore considered by the court, that the decree of the circuit court be reversed, at the costs of the defendants in error; and that this cause be remanded to said court, which court are hereby directed to dismiss the bill of complaint. All which is ordered to be certified to said court.

It is further considered by the court, that the plaintiff in error recover of the defendants in error the sum of dollars and cents, her costs and charges in this behalf expended.

THE STATE OF INDIANA, *ss:*

I, Henry P. Coburn, clerk of the supreme court, certify, that the foregoing is a full and true copy of the transcript of the record of the above entitled cause from the Marion circuit court, and of the proceedings, opinion, and judgment of the supreme court in the above entitled cause.

In testimony whereof I hereto set my hand and affix the seal of said court, at Indianapolis, this seventeenth day of December, [L. S.] A. D. 1850. H. P. COBURN, *C. S. C.*

Transcript, writ of error, summonses, and cert. and seal, $45 30.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the supreme court of the State of Indiana, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between the Board of Trustees for the Vincennes University and the State of Indiana, manifest error hath happened to the great damage of the said the Board of Trustees for the Vincennes University, as by the complaint of said board appears; and we being willing that the error, if any, should be corrected, and justice done to the parties, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, the 5th day of December, eighteen hundred and fifty, and of the independence of the United States the 74th.

In testimony whereof, I, Henry P. Coburn, clerk of the said supreme court of the State of Indiana, have hereto affixed the seal of said court, the day and year aforesaid.

[L. S.]

H. P. COBURN, *C. S. C.*

THE UNITED STATES OF AMERICA, *ss:*

To the State of Indiana, greeting:

The State of Indiana is hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Indiana, wherein the board of trustees for the Vincennes University is plaintiff, and the State of Indiana is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Isaac Blackford, one of the judges of the said supreme court of the State of Indiana, the 7th day of December, eighteen hundred and fifty. ISAAC BLACKFORD.

EXECUTIVE DEPARTMENT, *Indianapolis, Dec.* 9, 1850.

I, the undersigned, governor of the State of Indiana, hereby acknowledge service this day of the within citation by reading the same to me, and by the delivery of a copy thereof to me.

JOSEPH S. WRIGHT.